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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1271.

PAT. CALLAN, PLAINTIFF IN ERROR,

vs.

JOHN W. BRANSFORD, TREASURER OF THE CITY OF LYNCHBURG, VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED SEPTEMBER 6, 1890.

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Pleas before the supreme court of appeals, held at the State court-house, in the city of Richmond, on Thursday, the 5th of December, 1889.

Be it remembered that heretofore, to wit, on the 15th of August, 1889, came Pat. Callan, by counsel, and filed his petition for a writ of error and supersedeas to a judgment rendered by the corporation court of the city of Lynchburg on the 4th of June, 1889; which petition, with the transcript of the record accompanying the same, is as follows:

Petition.

IN THE

SUPREME COURT OF APPEALS

OF VIRGINIA.

RICHMOND.

CALLAN vs. BRANSFORD, TREASURER.

To the Honorable Judges of the
Supreme Court of Appeals of Virginia:

Your petitioner, Pat Callan, respectfully represents that he is aggrieved by a final judgment of the Corporation Court of the city of Lynchburg, rendered on the 4th day of June, 1889, against him in a certain action at law pending in said court against John W. Bransford, treasurer of said city.

The record herewith exhibited presents the following case, so far as it is necessary to state the same:

The plaintiff is a citizen and resident of the city of Lynchburg, and was engaged in a business requiring a revenue license from the State of Virginia. The said license was duly assessed against him, and amounted to $221.75 (see envelope Ex.), for which assessment the said plaintiff tendered in payment the sum of $222 in the past-due tax-receivable coupons of the State of Virginia, cut from the bonds of the said State.

Said tender was made on the 30th day of April, 1888, to pay the amount of said assessment furnished him by the commissioner of the revenue, and was offered in payment of the sum lawfully assessed against him for his license, to said Bransford, treasurer, as aforesaid, and who is the officer charged by law with the duty of collecting the said revenue tax.

The said coupons so tendered are, by law, receivable for all taxes,

debts, dues, and demands due the State, and each bears upon its face the contract of the State that they are so receivable, as provided by an act of the General Assembly of March 30, 1871, known as the Funding Act.

That said coupons, the genuineness of which was not questioned, were, nevertheless, refused in payment of the tax by the said Bransford, treasurer.

The said treasurer, after the refusal as aforesaid, was offered lawful money of the United States in payment of the said tax, which was also refused, because the same was tendered under protest; and thereupon the said Bransford proposed to petitioner that if he would deposit with him, the said Bransford, the coupons so tendered and refused, that he, the said Bransford, would accept the payment of the said tax under protest, as offered.

That after much remonstrance against this illegal and oppressive demand, petitioner accepted the said offer and *deposited* the coupons which had been tendered, and thereupon paid the said sum of $221.75 in lawful money, under protest.

The said Bransford was then and there duly notified, and was well aware that an action would be brought against him to recover the sum so paid.

The said sum so assessed was leviable, and by the statutes of the State your petitioner was liable to a criminal prosecution for conducting a business without a license, notwithstanding his said tender of the said tax-receivable coupons. (Brown, Davis & Co. vs. Greenhow, 80 Va., 118.)

That on the 5th day of May, 1888, following, your petitioner brought his action of assumpsit against the said Bransford to recover the said sum of $221.75, paid under protest with said notice.

That upon the trial of this cause sundry bills of exception were filed to the rulings of the court, and after the rendition of a verdict by the jury in the said case the court was asked to set aside the same as being contrary to the law and the evidence in the said cause; which motion the court overruled, and thereupon the said petitioner again excepted, and prayed the court to certify the evidence, which was accordingly done, all of which fully appears in the said transcript of the record.

Your petitioner is advised that the rulings of the court in this case are plainly erroneous; that in Antoni vs. Greenhow, 107 U. S., it is said: "The right of the coupon-holder is to have his coupon received for taxes when offered," and "any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract and void as against coupon-holders."

This right is well settled by repeated decisions of the United States courts. The act of the 26th of January, 1882, allowing an action against the collecting officer, together with the acts of Febru-

ary 7, 1884, and March 13, 1884, and all other amendments thereto, were, in Poindexter vs. Greenhow, 114 U. S, held to be unconstitutional, as affording "no remedy whatever for the loss of the specific right of the coupon-holder to pay his taxes in coupons," and void as against such tax-payers tendering coupons as do not consent thereto; "that said acts are not laws of Virginia."

Petitioner never consented to accept the terms offered by the said act and its amendments. The act aforesaid having been declared null and void, because "affording no remedy," by the United States Supreme Court, it may be dismissed from further consideration.

The only remedy now remaining to tax-payers is the remedy in lieu of the writ of mandamus—viz., the act of January 14, 1882—and the petitioner, as is shown in this case, being unable to produce the bonds from which the coupons were cut, with proof of the fact, he is wholly without remedy by statute, and is thus left to assert his common law remedy for money had and received against the collecting officer.

The convenient remedy against an officer for money illegally exacted, adopted by the United States courts, is assumpsit for money had and received, which courts are, in their origin, statutory, and derive their powers and jurisdiction from the acts of Congress, whereas the State courts derive from the parental Government of England a common law jurisdiction, which renders complete the common law remedy by action of assumpsit. (See Cary vs. Curtis, 3 How., 265, and cases cited; Moses vs. McFarlen, Burr; Stratton vs. Ratstall, 2 T. R., 370; Greenway vs. Hurd, 4 T. R., 554; Tracy vs. Startwout, 10 Pet., 84; Bend vs. Hoyt, 13 Pet., 263; Coles vs. Wright, 4 Taunt. and 7 Barn. & Cres., 101; 2 Camp., 339; 1 Crompton & Jarvis, 83; Phila. vs. Deihl, 5 Wall., 720; 38 Am. Rep., 189; 2 Rob. Prac., new ed., 449, 473; Erskine vs. Vanarsdale, 15 Wall., 63; Raynsford vs. Phelps, 43 Mich., 342, and cases cited; 2 W. Bl., 906.

Petitioner is advised that a statute of the State could not divest the tax-payer of this common law remedy without providing its equivalent; that no statute has pretended to do so save that of the 26th of January, 1882, and amendments, which have been pronounced null and void.

The following errors are assigned:

1. The coupons tendered, as shown by the testimony, having been illegally received on deposit by the said treasurer, but without objection being raised to their genuineness, it was error in the court to put the burden of proof of their genuineness on the plaintiff.

2. The said John W. Bransford being the person actually producing the coupons, the burden of proof was by statute devolved on him, it being unnecessary to the plaintiff's case to prove the genuinenes of the said coupons.

3. The court erred in requiring the production of the bonds with proof that the said coupons were cut therefrom, the plaintiff being not able to produce the same, he not being the owner thereof, and know-

ing nothing whatever of their whereabouts. The coupons are drawn so that they can be separated from the bonds, and, like the bonds, are negotiable, and pass by delivery, and the owner of the coupons may sue without being required to produce the bonds. (Thompson vs. Lee County, 3 Wall., 327.)

4. The statute aforesaid, requiring the production of the bond and excluding all other evidence, is unconstitutional—impairs the obligation of the contract which is protected by the Constitution of the United States.

5. The court erred in refusing to grant the motion of the plaintiff to set the verdict of the jury aside and to grant him a new trial on the ground that the said verdict is contrary to the law and the evidence in said case.

For these and other errors apparent upon the face of the record, petitioner prays that a writ of error and supersedeas may be awarded to the judgment aforesaid, and that the same may be reviewed and reversed.

PAT CALLAN,
By Counsel.

W. W. LARKIN,
For Appellant.

As will be seen by the accompanying record it was agreed by counsel that 44 succeeding cases should be governed by the result of this case, this being the only case actually tried, it being further agreed that the evidence is the same in each and all of the said cases.

PETITIONERS,
By W. W. LARKIN,
Their Attorney.

I, W. W. Larkin, an attorney practicing in the Supreme Court of Appeals of Virginia, certify that in my opinion the judgment complained of in the foregoing case of Pat Callan vs. Jno. W. Bransford, treasurer, is erroneous, and should be reviewed and reversed.

W. W. LARKIN.

Writ of error and supersedeas awarded. Bond required in penalty of $150.

L. L. LEWIS.

August 14th, 1889.

To the clerk of the Supreme Court of Appeals at Richmond.

VIRGINIA:

Pleas before the Honorable J. Singleton Diggs, judge of the Corporation Court for the city of Lynchburg, at the court-house thereof, on Saturday, the 29th day of June, A. D. 1889.

Be it remembered that heretofore—to-wit, on the 5th day of May, 1888—came Pat Callan, by W. W. Larkin, his attorney, and sued out of the clerk's office of the Corporation Court for the city of Lynchburg, his writ of summons against John W. Bransford, treasurer of the city of Lynchburg, returnable to the first Monday in May, 1888, which said writ was returned duly executed.

At another day—to-wit, at rules held in the clerk's office of the said Corporation Court for the city of Lynchburg, on Monday, the 7th day of May, 1888—came the plaintiff, by his attorney, and filed his declaration against the said defendant, which said declaration is in the words and figures following—to-wit:

Virginia:

In the Corporation Court of the city of Lynchburg, May rules, 1888—to-wit:

Pat Callan, Plaintiff,
complains of
John W. Bransford, treasurer of the
city of Lynchburg, Defendant,

who has been summoned to answer a plea of trespass on the
page 2 } case in assumpsit. For this—to-wit: That the said defendant heretofore—to-wit, on the 30th day of April, 1888—at the —— —— aforesaid, was indebted to the plaintiff in the sum of $222, for the price and value of goods then and there sold and delivered by the plaintiff to the defendant at his request.

And in the sum of $—— for the price and value of work then and there done, and materials for the same provided, by the plaintiff for the defendant at — request.

And in the sum of $222, for money then and there left by the plaintiff to the defendant at his request.

And in the sum of $222, for money then and there paid by the plaintiff for the use of defendant at his request.

And in the sum of $222, for money then and there received by the defendant for the use of the plaintiff.

And in the sum of $222, for money found due from the defendant to the plaintiff on an account then and there stated between them.

Jno. W. Bransford, Treas., &c.
To Pat Callan.

1888.
April 30. For this sum p'd under protest, $222 00
In'st from date.

And the defendant afterwards, in consideration of the premises respectively, then and there promised to pay the said several sums of money respectively to the plaintiff on request; yet the
page 3 } said defendant, although often requested, has not yet paid the same, or any part thereof, to the said plaintiff, but the same to pay has hitherto wholly neglected and refused, and still neglect- and refuse-. To the damage of the said plaintiff, $300. And therefore he brings his suit.

LARKIN, p. q.

At another day—to-wit: At a Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Thursday, the 14th day of June, 1888.

This day came the parties by their attorneys, and the defendant, for plea, says that he did not undertake and promise in manner and form as the plaintiff in his declaration against him hath complained, and of this he puts himself upon the country, and the plaintiff doth the like. Therenpon the judgment and writ of enquiry awarded at the rules are set aside.

At another day—to-wit: At a Corporation Court for the city, continued and held at the court-house thereof, on Thursday, the 20th day of September, 1888.

This day came again the parties by their attorneys, and they demanding a jury, there came a jury—to-wit, E. W. Boyd, A. C. Yuille. Robert V. Baughan, W. S. Powers, C. B. Burrow, J. S. Hamner, J. C. Myers, R. J. Berndt, James F. Seay, J. M. Averett, A. E. Rose, and W. H. Harris—who were sworn to try the issue joined, and, having
page 4 } heard the evidence, were adjourned until to-morrow morning at ten o'clock.

At which day—to-wit: At a Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Friday, the 21st day of September, 1888.

This day came again the parties by their attorneys, and the jury sworn on yesterday for the trial of this cause appeared in court pursuant to their adjournment, and, having heard the argument of counsel, returned a verdict in these words: "We, the jury, find for the defendant.—R. J. Berndt." Thereupon the plaintiff moved the court to set aside said verdict and grant him a new trial; and the court, not being advised of its judgment to be given thereon, doth take time to consider thereof.

At another day—to-wit: At a Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Tuesday, the 18th day of December, 1888.

This day came again the parties by their attorneys, and the court, having maturely considered the plaintiff's motion for a new trial, doth grant the same, upon condition that he pay the costs of the former trial had herein.

At another day—to-wit: At a Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Tuesday, the 4th day of June, 1889.

It appearing by an affidavit filed that there is in the possession of R. W. A. Horner, manager of the Western Union Telegraph
page 5 Co.'s office in this city, a certain telegram, or a copy thereof, sent by the defendant in this controversy to Morton Marye, Auditor of Public Accounts, Richmond, Va., and the reply thereto, material and proper to be produced upon the trial of this action, it is ordered that the clerk of this court do issue a *subpœna duces tecum* to compel such production to be made forthwith before this court.

Thereupon came the parties by their attorneys, and they so demanding, there came a jury—to-wit, J. M. Armistead, W. R. Noble, J. A. Mahood, Henry May, W. S. Carroll, W. P. Holt, W. P. Tinsley, John Wills, J. N. Gordon, P. H. Vermillion, J. S. Carney, and W. N. Brown who were sworn to try the issue joined, and, having partly heard the evidence, were adjourned until to-morrow morning at ten o'clock.

At which day—to-wit: At the Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Wednesday, the 5th day of June, 1889.

This day came again the parties by their attorneys, and the jury sworn on yesterday for the trial of this controversy appeared pursuant to their adjournment, and, having fully heard the evidence upon their oath, do say: "We, the jury, find for the defendant.—W. S. Carroll." Whereupon the plaintiff moved the court to set aside said verdict and
page 6 grant him a new trial; and the court, not being advised of its judgment to be given in the premises, doth take time to consider thereof.

Memo.—Upon the trial of this controversy the plaintiff excepted to sundry opinions of the court, and tendered his three several bills of exceptions, numbered 1, 2, and 3, respectively, which were signed, sealed, and ordered to be made a part of the record without being here copied.

The bills of exceptions referred to in the foregoing order are in the words and figures following—to-wit:

In the Corporation Court of the City of Lynchburg.

Pat Callan
vs.
John W. Bransford. } In this and forty-four succeeding cases.

No. 1.

Be it remembered that upon the trial of this cause the plaintiff offered C. T. Plunkett, a banker of many years' experience in the city of Lynchburg, as an expert to show that the coupons tendered by the plaintiff are the genuine past-due tax-receivable coupons cut from the bonds of the State of Virginia, to which offer the defendant, by counsel, objected, on the ground that it appears that the said papers are engraved, and a statute of the State forbids the introduction of expert testimony with reference to such coupons; which said objection the court sus-
page 7 } tained on the ground alleged. To which said ruling and action of the court the plaintiff excepted, and tendered this, his first bill of exceptions, which he prays may be signed, sealed, and enrolled as a part of the record, which is done accordingly.

J. SINGLETON DIGGS, [Seal.]

No. 2.

Be it further remembered that upon the trial of this cause, when it appeared that the plaintiff alleged that he had tendered the past-due tax-receivable coupons cut from the bonds of the State of Virginia in payment of his license-tax, the defendant demanded the production of the bonds from which the coupons were cut, and objected to any testimony on the subject of the genuineness of the said coupons unless the bonds from which the same were cut were produced in court on the trial, on the ground that there is upon the statute-book of the said State an act of its Legislature forbidding such testimony unless the said bonds are so produced; which said objection the court sustained on the ground mentioned. To which said action and ruling of the court the plaintiff excepted, and tendered this, his second bill of exceptions, which he prays may be signed, sealed, and enrolled as a part of the record, which is done accordingly.

J. SINGLETON DIGGS, [Seal.]

Pat Callan
vs.
Jno. W. Bransford. } Bill of Ex. in this and 44 succeeding cases.

No. 3.

page 8 } Be it remembered that upon the trial of this cause, after the plaintiff to sustain the issue upon his part had introduced evidence tending to prove that the defendant was the officer charged by law with the collection of the license taxes due the State of Virginia for the year 1888–'9, in the city of Lynchburg; that the plaintiff was doing business in the city of Lynchburg, for which he was required to pay a license-tax to the State of Virginia for the period from the 1st day of May, 1888, to the 1st day of May, 1889, which tax amounted to $219; that said plaintiff tendered in payment of said tax past-due tax-receivable coupons, alleged to have been cut from bonds of the State of Virginia, of the amount of $219, and that the defendant refused to receive said coupons in payment of said tax; that thereupon the plaintiff paid the amount of said tax in lawful money under protest, and that the defendant, before receiving said money paid under protest, required the plaintiff to deposit with him the said tax-receivable coupons, which the plaintiff thereupon did; and that this action is to recover back the amount of said money so paid, the plaintiff moved the court to instruct the jury as follows:

page 9 } "If the jury believe from the evidence that the plaintiff tendered to the defendant in payment of his license tax due to the State the past-due tax-receivable coupons of the State, and that the defendant made no question of the genuineness of the same, it was the defendant's duty to receive them in payment of the license, and to issue the same; but that if he did not, and took the coupons not for identification and verification under the statute in such case made and provided, and that he took the money also for the same license, the plaintiff is entitled to recover in this action."

But the court refused to give said instruction, to which action of the court the plaintiff excepted, and asked the court to sign and seal this his bill of exceptions and make the same a part of the record, which is accordingly done.

J. SINGLETON DIGGS, [Seal.]

At another day—to-wit: At a Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Thursday, the 20th day of June, 1889.

This day came again the parties by their attorneys, and the court, having maturely considered the plaintiff's motion for a new trial, doth overrule the same. It is therefore considered by the court that the

plaintiff take nothing by his bill, but for his false clamor be in mercy, &c. And that the defendant go thereof without day, and page 10 recover against the plaintiff his costs by him about his defence in this behalf expended.

And now at this day—to-wit: At a Corporation Court for the city of Lynchburg, continued and held at the court-house thereof, on Saturday, the 29th day of June, A. D. 1889, it being the same day and year first herein mentioned.

This day came again the parties by their attorneys, and the plaintiff tendered two additional bills of exceptions, marked No. 4 and No. 5 respectively, which were signed and sealed by court and ordered to be made a part of the record without being here copied.

The bills of exceptions referred to in the foregoing order are in the words and figures following—to-wit:

Pat Callan
vs.
Bransford, Tr.

Bill Ex. No. 4 in this and 44 Succeeding Cases.

Be it remembered that upon the trial of cause the plaintiff requested the court to give the jury an instruction in the following words [same as in No. 3—see it], which instruction the court refused to give; to which said ruling and action of the court the plaintiff excepted, and he prays that this, his fourth bill of exception, may be signed, sealed, and enrolled, which is done accordingly.

J. SINGLETON DIGGS. [Seal.]

Callan
vs.
Bransford.

Bill of Exception No. 5 in this and 44 Succeeding Cases.

And the plaintiff moved the court to set aside the verdict of the jury on the ground that it was contrary to law and against the evidence, which motion the court overruled; and to said action and ruling of the court the plaintiff excepted, and he prays that the court will certify the evidence, which is done accordingly in the words and figures following—to-wit:

In the Corporation Court of the City of Lynchburg, June Rules, 1889.

Pat Callan
vs.
J. W. Bransford, Treasurer.

W. W. Larkin, being first duly sworn, says:

page 11 Early on the morning of the 30th of April, 1888, I proceeded to the office of Jno. W. Bransford, trea., with Pat Callan, who is the plaintiff in this case, and a number of other parties, who proposed to pay their license-taxes in coupons. Mr. Bransford and Mr. Nowlin had signified their readiness to receive them the day before the first day of May, the day before the license year commenced. That is the usual way that they commence, on the 30th of April, if not a little earlier. I desired to present a number of cases on the 30th of April, because it was the day before the Code took effect, and I thought there might be some advantage, perhaps, in proceeding on that day. We went there for the purpose, and did tender Mr. Bransford coupons for these license-taxes. Mr. Bransford refused to receive the coupons, and he refused also, after the tender of the coupons, to receive money under protest in payment of licenses. I remonstrated with him, and told him that a party had always, under all circumstances, the right to pay his money under protest when he did not consider the collection a lawful one. Mr. Bransford desired time to reflect and consider and consult counsel in the matter. He took, perhaps, more than an hour, and we agreed to see him again in reference to the matter. I told Mr. Bransford that I had the right to have a mandamus to compel him to receive money under protest, and thought I

page 12 would apply to Judge Latham for a mandamus in each case. I told him that I would be putting considerable expense upon him, and thought he ought not to require it. I did apply to Judge Latham, telling him that I had about 40 or 50 cases, and that I did not think it would be advisable for me to prepare so many petitions unless I knew whether he would grant the mandamus or not. He said that he considered it a proper remedy, and would grant the mandamus in each case. I reported the fact to Mr. Bransford in the same hour, and that I thought the cost would be about $10.00 in each case, and advised him not to incur the expense. After Mr. Bransford had had time to consult—what he did and whom he consulted I cannot say—he did come back, and said that if I would deposit the coupons with him in each case that he would receive the money under protest. I remonstrated with him, and told him distinctly that there was no law requiring me to deposit the coupons with him. I recited to him the different statutes under which he had the right to receive the coupons. I told him that he might take the coupons and mark them, place them in an envelope and return them to me, if I chose to permit him to do so. I told him that another mode was under Coupon-Killer No. 1 for

identification and verification, and another mode under the second coupon-killer and paying him under protest, and that I did not propose to proceed under any of the statutes provided by law; that I proposed to rest upon my rights as adjudicated by the courts of tendering my coupons, and, upon his refusal, to pay the money under protest. Mr. Bransford adhered to his determination to require the coupons to be deposited, and agreed to receive the money under protest, and we

page 13 { proceeded to pay him in all these cases. I had but one understanding and one discussion in reference to all of them, and the same agreement and the same contract applied in all

the cases in which I tendered coupons and paid money under protest. On the first day I used those envelopes [produced]. I cannot say whose handwriting that is, but, with that exception, *of* the handwriting on those envelopes has not been disturbed by the dotting of an "i" or the crossing of a "t" since they passed to Mr. Bransford's hands. There is nothing in the envelope now. I placed the coupons in them and marked under them, "Under Protest," because I expected to use other envelopes with the coupons tendered with bonds. I marked them before I went to Bransford's office, and prepared each one of these envelopes at my office, as well as I can remember. It may be that I prepared one or two after getting there, but each envelope bore upon its face that "under protest," and my habit was to give Mr. Bransford the envelope; he would take out the coupons and copy them according to their number and place them in another envelope, and hand me back this envelope. It sometimes happened that I would take the coupons out of the envelope and place them upon the top of the envelope and pass the coupons and envelope to Mr. Bransford, and that "under protest" was written upon it just as you see it appears now in all these cases, and the name of the party. Mr. Bransford required me to deposit the coupons as I paid them to him, but never made any objection

page 14 { to the genuineness—never raised the question at all; they were in fact all tax-receivable coupons cut from the bonds of the Commonwealth, and were past due and receivable for

taxes, debts, and demands. I never had the bonds, and know nothing of their existence. I never saw one of them, and I do not know that they are in existence. They may be at the bottom of the ocean, or in Germany or London or elsewhere. The Commonwealth's attorney demands production of the bonds from which coupons were cut, also proof of the fact that these coupons were cut for the bonds produced. I am very familiar with the statutes in regard to this matter. I suppose that if I were to say that I had read each of them over a thousand times it would be no exaggeration. I did not pay them under any coupon-killer; I did not want my coupons killed, and I took pains to try to avoid the killers and proceeded under ordinary remedy. I explained especially and particularly to Mr. Bransford that he was requiring me to deposit these coupons with him contrary to the law. Nothing was said about Coupon-Killer No. 1, because I had declined to put them in under that. Mr. Bransford had been theretofore repeat-

edly charging me with tendering the same coupons, having the same little batch of coupons, and paying for everybody's license with them, and I would not have had any objection to doing that as far as that is concerned, because I did not regard the statute as worth a straw; but when Mr. Bransford required the coupons in each case to be deposited with him, I accepted his proposition after the remonstrance that I have referred to, and I did proceed to deposit them in each case, and to pay the money under protest, and, after so doing, tendering and depositing them. I accepted his proposition to deposit them with him. I gave the coupons to him, and then paid the money under protest, or the parties did so. It would have been a ruinous proceeding to
page 15 pay the money under protest when you come in to comply with the statute, and I had not the slightest idea of paying money under Coupon-Killer No. 1, for the reason that I could not produce the bonds, and I would have preferred, as an alternative, to put the coupons in the fire or throw them away in the river on its flood. It would have been a foolish thing that I could not have entertained for a moment, because I knew I would have had to pay costs here, and after they had carried it to the Court of Appeals of Virginia I would have had another bill of costs there, and, if carried further, then would have had to pay another bill of costs. I started to say a moment ago that my experience with Mr. Bransford led me to believe that his memory was very faulty, and I called upon a number of persons—Mr. J. D. Tanner, Mr. J. H. Gregory, and several others, Mr. Phealey (?), as well as I remember—to notice particularly what passed between Mr. Bransford and themselves and me, so that they would remember it distinctly in case Mr. Bransford's memory was at fault. I called upon these persons to remember what passed in this case and in all the cases. One transaction, one statement, and one agreement will refer to all these cases. I heard, in a number of cases that I shall present, the party remind Mr. Bransford that these payments were made under protest in my presence, and that was after the tender and deposit of the coupons. I do not pretend to undertake to explain what Mr. Bransford meant by the word "deposit." It is a term unknown to any of the statutes, and unknown to law in reference to coupons, and I do not wish to explain it. Mr. Bransford might put one interpretation on it and I another. All I do say is that the money was
page 16 paid under protest after the tender and receipt of the coupons by Mr. Bransford. Mr. Bransford refused to give me a receipt, and the reason he gave for not doing so was that the First Auditor has instructed him not to give receipts, for the reason that it afforded too great facilities for the parties tendering coupons to prove their cases, and he wanted them to prove them the best way they could, and hence it was I called these parties to be witnesses of what transpired between us. He did not give a receipt for anything; he refused to give as much as the scratch of a pen. We got the licenses upon the payment of money under protest. The law of Coupon-Killer No. 1 required Mr. Bransford to give a receipt, and whenever I have paid him, so far as my

memory serves me now, he in every case gave this receipt for coupons that were paid according to Coupon-Killer No. 1, because the statute required him to give a receipt. I told Mr. Bransford that I did not want those marked, and did not want them sent to court for verification and identification. I told him that distinctly. The law of Coupon-Killer No. 1 requires him to mark on the coupon the initials of the tax-payer, the day of the month and the year, and send them here for identification and verification when we proceed under Coupon-Killer No. 1. I was always very particular in cases that I paid for identification and verification to see that Mr. Bransford marked them. It sometimes happened that he failed to mark them, and when those came here Mr. Burroughs made a point because they were not marked down there, and I called upon the court in one case to require Mr.
page 17 Bransford to mark them here, as it was his own fault, and Mr. Burroughs opposed that proposition. Another matter I will mention, while I think of it, is that, so far as Mr. Bransford having any terror of the law in receiving these coupons otherwise than according to law, it has been the habit of the law officers here who have writs of *capias* against parties assessed with fines to receive the coupons. I have paid them repeatedly to the police officers and to Mr. Day. I state that because Mr. Burroughs made the statements that Mr. Bransford cannot possibly receive these, because it was in violation of law. Mr. Burroughs stated that these coupons were not marked, because I requested that they should not be marked; but I requested that they should not be marked because they were not tendered under the law that required them to be marked. I did not want them sent here at all, or, if they were sent, to be mixed up and give me trouble in this other batch of cases I presented on the first of May, and you will find those to be marked "with bonds," and those envelopes were delivered to Mr. Bransford just as they are now, and were carried along in two rows of cases, one "paid under protest" and the other "with bonds," and the coupons were marked in that way. Although these coupons were tendered on the 30th of April, they were not sent to the court until some time afterwards. These coupons, with the bonds, or the most of them, were sent here, and the cases were brought on on the 12th of May. I happened to be in the court when Mr. Bransford delivered these coupons in the protest cases, and I protested to Judge Latham that he should not receive them; that I did not pay the license under Coupon-Killer No. 1, and had never intended that they should
page 18 be sent here for verification and identification, and I protested against it then when they were delivered in my presence in court. Mr. Plunkett presented one or two of these cases, and Mr. Thomas Larkin one or two of them. Mr. Bransford declined, as stated, to give me receipts for these coupons, and I told the parties that I would not insist upon his violating the instruction he had received from the Auditor. If the coupons are tendered for identification and verification he invariably gives a receipt. I think possibly, as he would not give a receipt in one of the cases, he did not give them in the other. I

do not remember positively about that. In every instance he gave a receipt where they were tendered under Coupon-Killer No. 1. That is the form of receipt [produced]. That comes from his office, and is enclosed in the envelope. [Receipt read.] He refused to give me any receipt at all in all these cases at bar. If I had tendered them under Coupon-Killer No. 1 he would have had no hesitation in giving me a receipt. He never did hesitate to give a recept under Coupon-Killer No. 1. The law requires him to do it. If I had paid money under protest under Coupon-Killer No. 1, I would have proceeded contrary to law.

Q. Did you have the right, if proceeding under Coupon-Killer No. 1, to require that he should mark these coupons with the initials and day of the tender?

Objected to by Mr. Burroughs.

page 19 Ans. It was discussed and referred to on every occasion in which one of these was delivered. "These I pay under Coupon-Killer No. 1 I want sent to the court." "These are not to be marked, because I do not want them marked and sent to the court," and it was because I did not have the bonds. Suppose that you proceeded under Coupon-Killer No. 1. You could only expect to proceed under Coupon-Killer No. 1 by tendering the coupon and paying the money at the same time not under protest, and filing a petition here and evidence before the jury at trial as to the genuineness of the coupons by the production of the bonds. I should think a crazy man would have more sense than to proceed that way. I did not use those with bonds on the first day, but used them alternately on the next day —that is, put them in now and then. I had both. I did not get through the first day with all of the cases that were presented. I do not pretend to say how Mr. Bransford received them. I know that I tendered the coupons. They were deposited with him at his request and demand, and that I paid the money under protest. As to how he received it, it was a matter for his own mind, and not mine. I could see that I did right to pay under protest. Judge Latham, on one occasion, required me to deposit about $7,000 in coupons before he would allow me to have judgments against parties, and that was without authority of law, and I told him about it.

I can say that I heard what took place between Mr. Tanner and Mr. Bransford, and that Mr. Tanner proceeded according to my directions. I told Mr. Tanner that the matter had been arranged between Mr. Bransford and myself, and he required the coupons deposited, and he paid the money under protest, and I heard that agreement between

page 20 them, that he paid under protest. It may be that I have seen the coupons in Mr. Callan's case after they were taken out at the last trial, but I have always kept my fingers off them since I parted with them. I have never had control of them since. They were taken away from me against my protest, and I yielded to it, and never want to see them any more. Mr. Bransford

told me very distinctly that the Auditor had told him that it afforded the other side too much facility in proving their case, and not to give them any receipt, and let them prove it the best way they can. The Auditor told him that. Sometimes, on previous occasions, he would mark on the application for license "received under protest." There was no particular way. We always had some sort of a receipt prior to this that it was under protest. I never had to ask Mr. Bransford for a receipt when the coupons were tendered for identification and verification, but always, of his own motion, receipted and passed it to me. He always did it without my calling for or requiring it.

Cross-Examination.

By Mr. Burroughs: I suppose it was probably about half-past eight or thereabouts that I went to Mr. Bransford's office. I tendered to Mr. Bransford coupons, and offered to pay under protest, and he refused to do that. He refused the coupons, and refused to take the money under protest. There were a considerable number of persons present, as Mr. Tanner said. [Previous to cross-examination Mr. Tanner gave his evidence, which follows after Mr. Larkin's.] There was such a crowd I cannot undertake to say how many were present. I page 21 did nothing the first visit. Mr. Bransford seemed to be very determined that he would not take coupons except for verification. He said he was not going to be caught again, as I had recovered judgment against him and the money was paid in Richmond. I told him that I would bet him $500 that in less than an hour's time he would receive my money under protest. I suppose it was a little more than an hour before I came back. I knew Mr. Bransford would receive it under protest. When I came back the second time there were only a few persons there. I cannot undertake to give you their names. They came in slowly. I think Mr. Pat. Haley, Mr. Gregory, Mr. Tanner, Mr. Cheatham, and Mr. Lazarus came in; I do not know in what order, but I do know they commenced to fall in, and a crowd gathered. Mr. Bransford required me to deposit the coupons. I then considered it as a requirement that I should put up the coupons, because Mr. Bransford thought that I did not have but a few of them, and would soon run out of coupons, and that would be the end of the transaction. Mr. Bransford refused to take the coupons, and he refused to receive the money under protest. Subsequently, after having this interview, he said if I would deposit the coupons with him he would receive the money under protest and issue the licenses. I said that I had but one agreement with him in reference to all the cases, and that was that agreement. I testified that I proceeded in that way; that I had but one agreement, and that agreement was that I accepted Mr. Bransford's proposition. I had but one agreement, and that was that the coupons should be deposited with him as he required it, and as I did not assent too readily, and that he would receive the money under protest and issue the licenses. That agreement applied to all of the

page 22 cases at bar. I do not know who was present when that agreement was entered into. I do not know that I could mention the name of anybody that was present. During the morning, when Mr. Bransford was so positive in refusing to receive coupons except for identification and verification, and to receive the money under protest, Mr. Dick Lacy and Mr. Younger (?) were present, and some others. I remember Mr. Lacy was present, for the reason that he thought Mr. Bransford was not right in refusing to receive the money under protest; said to Bransford that he always took money under protest. I give that as a reason why I remember his being present. I do not remember of anybody being present, and I think at this present time that no one was present except Mr. Bransford and myself when we were talking over this matter. We did not go to a corner to hold the conversation. We were talking in the office. We spoke of the matter and made the arrangement in the office.

Q. That arrangement was that he was to receive the coupons in some other way than under Coupon-Killer No. 1; to receive them on deposit and to take money under protest?

Answer. I did not say that he was to take the coupons in some other way. I do not know that any other way was mentioned. He was to receive the coupons if I would deposit them with him, and I paid the money under protest.

Q. You have said Mr. Bransford did not mark these coupons in some instances, and have testified before the jury that they were sometimes not marked. I want you to state to the jury, when I called your attention and the court's attention in cases tried heretofore, that the coupons were not marked, did the treasurer come up and promptly mark them here; was not that done in the very case you mention?

A. I do not propose to answer it in that form.

page 23 Q. Mr. Larkin, when you proceeded under Coupon-Killer No. 1 were not the coupons put in an envelope like that [produced] and sent to this court?

A. Yes, sir; in every case, as far as I know.

Q. Do you not remember that Mr. Bransford, in your presence, and in the presence of these parties who tendered the coupons, received the coupons and put them in envelopes like this, which were used for enclosing the coupons that were certified by the court for identification and verification.

Objected to by Mr. Lewis.

When I first went in I took a seat in the far corner of Mr. Bransford's office, and I sat there and re-counted the coupons, and Mr. Bransford told me that I could not make my office in his office, and that I must get out, and move it somewhere else. I got up then and went to the counter, and told Mr. Bransford I supposed I would have the right to stand there, and I found I was very much in the way of people coming in and going away. I got up and reminded Mr. Brans-

ford that it was a public office, and I had the right to be there, but during the time I saw that Mr. Bransford was putting these in envelopes. I do not know how long he had been putting them there. He was placing them in an envelope that looked like that. I was not near enough to see what was on it, and thought it was a very proper proceeding for him to put them in envelopes. I should not have objected to Mr. Bransford's putting them in the fire if he had wanted to. I take it for granted that it was an envelope of this description

page 24 } that Mr. Bransford used, and it was a matter that I had nothing to do with whatever. That was after I had paid the money and coupons. As I have testified, I got out of the way when the people were crowding, but was near enough to hear what was said, but not near enough to see what he wrote on these envelopes. If I had been Mr. Bransford's adviser I should have advised him to give me back the coupons and receive the money under protest, but he wanted to do what I did not want him, and I did not want to put myself in a position to allow him to be offensive to me. I had worn out my patience in giving him good counsel. I did not presume for a moment that Mr. Bransford had put any such construction on it. I thought, perhaps, they were the only envelopes he had, and that he had an abundance of them, and used them in that way. I stood near enough to see that my clients complied with the law in depositing the coupons with Mr. Bransford, and telling him that they paid the money under protest. He gave them no receipts, and if he had proceeded under Coupon-Killer No. 1 he would have given a receipt, and have carried the matter on in that way regularly, as required by statute, as he did in these other cases in which I had bonds. I do not think that when every man went up and told Mr. Bransford the same thing, that they paid under protest, that there was no protest mentioned when we paid under Coupon-Killer No. 1. I said a little while ago that Mr. Bransford had been in the habit, in previous years, of marking on the licenses of the several persons that it was paid under protest, but he excused himself from it in these cases, because he did not want to give any opportunity of showing the facts of the case

page 25 } under the instructions of the First Auditor. It was a habit to mark on the licenses, but in this case he did not do it, and excused himself in the way I have indicated. I have stated, when I was examined before, that I did not remember being present when Pat Callan tendered, but some time afterwards there was some occurrence that refreshed my memory about it and called it to my mind, and subsequently stated in the case I was present when he tendered. I did not remember it at first. I remember we deposited these coupons, and paid the money under protest. As I corrected my testimony at the last term of court, I remember being present at Pat Callan's case; I think most of what was done about these cases was done the first day or two. I think people, where they ran on a few days, were indicted, because they did not take out license on the first day of the month. These cases did not extend over a couple of weeks.

I think, because they anticipated we would use coupons, they would be snapped up and indicted. I think the best evidence I have got of it is my book, that I might refresh my memory from. There may have been one or two. [Objected to by Mr. Burroughs.] I find a whole page on referring to my book of tenders, on the 30th of April, and they commence there on the first of May, and I have no date after that. I think it probable one or two of these cases were along the 4th, 5th, or 6th of May, but I do not remember warning people not to extend them. They might have gone for six or eight days, probably; I do not think that much, because I warned everybody, because people laid themselves open to indictment. I would not exercise the same sort of particularity now, as I do not think so much attention is required to their being prompt. I cannot remember though how long the time extended, and think it was a short time; that is the best I can say.

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Q. Mr. Larkin, I want to ask you this question: Did not Mr. Bransford say to you early in the morning, also when you returned the second time, that he would not receive coupons except for identification and verification?

Answer. No, sir. He did not say in the way I have stated it in the early part of the morning that he would not do it, and he was very positive and vehement about it and very excited, that he would not do it; but as I have stated afterwards, it was but an hour or so afterwards that he did propose—I suppose he went to consult you—if I would deposit the coupons in those cases he would receive the money under protest and issue the licenses, but he had been very vehement and positive in refusing to receive the money under protest in the early morning. Mr. Bransford asked me to send for the parties, or it was agreed we should send for them, and they were dropping in after he made that offer, and the house was soon filled up.

Q. If he had made a declaration of this sort when half a dozen parties had applied for licenses, why did you think that that declaration would hold good to cover all the parties who would apply in the next two or three days? Why did not you apply it to the parties who were then applying and were present?

A. I do not know how many days were occupied, but I had no difficulty in making Mr. Bransford understand what I wanted, and went to him with that envelope "with bonds" and that "under protest," and the party told him in my presence that these paid with the bonds were wanted, marked, and sent to the court for indentification and verification, and these we deposited we paid under protest, and he never made any objection to either of them, and governed himself accordingly. I have said about a thousand times there was a considerable crowd there. I do not think I was very close to the applicants. I aimed to stand near enough to Mr. Bransford to post the client as to what he should do; not to pay the money first and tender the coupons afterwards, but to tender the coupons first. It was a matter I wanted to be particular about, and I posted myself, and

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always took care to ascertain that my instructions were being obeyed and followed to the strict letter. This was done in each case in which I was present. I cannot testify as to when I was not present. Mr. Bransford came back, and said if we would deposit the coupons with him that he would then receive the money under protest, and I said, furthermore, that I remonstrated with him; that there was no law which required me to deposit the coupons with him, and no law which justified him in receiving them on deposit, and I explained to him the different statutes at length.

Q. Had not you requested Mr. Bransford in some instances not to mark the coupons—on previous occasions?

A. I do not see how that is possible that I could have ever told him that. I was always very particular to see that they were marked, because I did not think I had the right to recover on them here, and the idea of sending coupons on here, when they know as well as I do that I should know the thing by heart, and then ask him not to mark the coupons; that is preposterous. It is impossible that I should have done it.

page 28 } Q. There are other cases of yours on the 30th of April and on the 1st of May, and two or three days after that?

A. No, sir; I have not said that. I say that on the 30th April I did not have any other coupon cases except these under protest on the 1st of May, and I did offer them "with bonds" and some "under protest." The envelopes are marked "with bonds." They are the coupons which I had bonds to produce in court when they were called for. I did not carry the bonds to the treasurer's office.

Q. So, then, the coupons were disconnected, and, to all appearances, were just as the coupons in this case were?

A. They are all the same, except that they were enclosed in an envelope marked "with bonds" and the others marked "under protest," and there was an identification mark on each bond and each coupon.

Q. Did not you in those very cases, transpiring along with these, make up and file your petition and try your case under Coupon-Killer No. 1?

A. Yes, sir; we tried some of them. Mr. Bransford gave me receipts in some cases. I do not think I bothered for receipts in many of the other cases. There are a number of receipts here. I do not remember whether Mr. Bransford gave me the receipts or who. There are not receipts with all of them. I do not remember that it was by my special request in those cases that they were given. I cannot say whether in those cases where receipts are given Mr. Tom Larkin attended to the cases. I represented a great many persons, and I did not take time to do more in one case than I did in the others. I relied upon the envelopes showing the different matters.

page 29 } Re-Examined.

The envelopes that the coupons were put in was an envelope that

looked like that. It had that appearance, I think. Mr. Bransford had been putting them away for some time before I observed him. Mr. Bransford requested me to establish my office somewhere else; I found I was in the way of the tax-payers, and I got away from there, just far enough to see that my clients followed my instructions, but I did see that Mr. Bransford was putting them in an envelope of that sort, and I did not object to it. Pat Callan's case was attended to on the 30th April, I think. It is the seventh case. I do not remember that Mr. Bransford ever failed to give me a receipt, unless he did it upon this occasion, when we were very busy, and I did not stay to get any receipt. I do not know whether the other clients got receipts or not. I think I relied mainly upon the envelopes in these cases. Those with receipts, I cannot say whether he gave them to me or to whom. I know it was Mr. Bransford's habit, without my requesting it, to give a receipt in which coupons were offered for verification, and a rule that he adhered to with great strictness. As to what occurred in particular cases, I cannot state except in a general way. That is an indication to me, and I suppose to Mr. Bransford, that the money was paid under protest. The envelopes were not sealed. I sometimes, just for the purpose of facilitating the matter, would merely pass it to Bransford with my thumb on the coupons, and he, in every instance, took the coupons up and disposed of them, and passed back the envelope. I have a great many more besides these envelopes.

page 30 } Q. Explain to the jury whether the number of cases you had were such as to make it important and proper that you should carefully fix and arrange everything beforehand?

A. Of course, it would be fatal if I were to put a coupon that I had a bond with in one of those envelopes "under protest;" that would all go to wreck and ruin. I had to be careful in getting the amount correct and the coupons to pay the amount, and in many cases I was particular paying the money. It had to be done with great particularity to avoid mistake. These were prepared before I went there. I generally took them out and re-counted them to see that they were right.

Re-Cross-Examination.

Q. You testified that you had a great many cases of this sort, and I want to ask you what interest you have other than attorney in these cases?

A. My pecuniary interest in those cases; well, sir, I think I am the owner of that case by assignment of the parties. I own a majority of them. There is nobody interested except myself and my client. In the majority of cases I think they were assigned to me, and in this case there is no one except myself interested in the case.

page 31 } John D. Tanner.

I forget the date I went down and offered the coupons in payment

for my license to Mr. Bransford. Mr. Bransford refused those coupons; then I offered him money, and he refused the money; then I went down home, and, I reckon, had been there an hour or an hour and a half, something about that time, and I was sent for to go back up there. So I went in and took my coupons again, and offered them, when he told me that was all right; that is all arranged. I do not know what arrangements had been made while I was gone, and I paid the money under protest, and he took both money and coupons, and I went away, and he gave me a receipt for the license. He said he had made some arrangement. On the last time I went I made a deposit of money and coupons both. I don't know why he refused to receive the money the first time. I tendered the coupons the first time I went, and told him I wanted to pay for my license with coupons, and tendered the coupons for that purpose. He refused them, and I then tendered the money, and he refused that, and I went away. I was afterwards sent for, and brought back and deposited my coupons with Mr. Bransford, and paid the money under protest for the license.

Q. Was that payment under protest made distinctly, so it could be heard, or how was it made?

A. Yes, sir; Mr. Larkin told me to pay it under protest, and I did pay it under protest. He told me to come in, but I did not hear it, and went back on the platform. I went out to the door. That was the first time I went.

Q. I could not exactly get from you what passed. You were acting under the advice and guidance of Mr. Larkin as your attorney?

page 32 A. Certainly, I was; and he was there present and attended to it. He was present on both occasions. Mr. Larkin told me to notice particularly what transpired on the payment and tender of the money, and told me to pay it under protest.

Cross-Examined.

I do not know what case this is that is being tried now.

Q. This is Pat Callan against J. W. Bransford; were you there when Pat Callan got his license?

A. I cannot tell you; there was a big crowd there in my own case.

Q. Did you hear any contract or agreement between Mr. Larkin and Mr. Bransford with reference to this matter; if so, state what the agreement was?

A. No, sir; I did not hear it. I was there until Mr. Bransford went off to do something, and then I said I would not stay. I have testified twice or three times in these cases.

Q. Are you not mistaken as to this, that Mr. Bransford made any remark after you went back, to the effect that it was arranged?

A. He told me it was arranged. I do not know whether I ever testified to that before or not. I tendered the coupons, and told him I paid under protest, and he said, That is arranged. If I had not offered

the coupons he would never have said anything about that arrangement. I am certain that happened just that way.

Q. Can you account for this, Mr. Tanner: It has been more than twelve months, and you remember and testify about it now, and did not testify last June, or last November, or last December?

A. I remembered it all the time. You never asked me about it. Mr. Larkin met me at the door and told me, You go in and pay it under protest. I went right there and paid it under protest.

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Q. I want you to go into detail. When you got to Mr. Bransford, you offered the coupons under protest and Mr. Bransford said it was all arranged?

A. Yes, sir. That was in my own case. He received the coupons under protest, and I paid the money under protest right down.

Q. You never heard anything of the contract or agreement?

A. There was a heap of talk around there. I think it was the 30th of April. I had been there once before. When I went the first time I offered the coupons the same way as I did under protest, and he said he would not take them. Then I tendered the money, and he would not take that. I am certain that is the way he done. The second time that I came back is the time he took them just as I offered them at first, and he took the money.

Pat Callan.

On the 30th of April, 1888, I went down to the treasurer's office, and told Mr. Bransford I wanted to pay my license in coupons. He said, "I won't take them," and then I offered him the money, and he said, "I won't take the money either." I said, "It seems to me you ought to take one or the other." I then went to Mr. Larkin's and told him he would not take coupons or money. "Well," he said, "I will see you down there after a while and see if he won't take one or the other." I went down there an hour or so afterwards, and I tendered the coupons and paid the money under protest when I went back. I told him distinctly that I tendered the coupons and paid the money under protest, and Mr. Larkin was standing right close up to me at the time.

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Cross-Examined.

My recollection of my testimony is that it is like it was the last time. I cannot tell you who was there when I paid. There were a dozen people, more or less. It was in the morning, some time about 10 or 11 o'clock. I didn't notice the time particularly. They were all standing waiting to come up. I handed my coupons to Mr. Bransford. I did not see him put them in an envelope. I do not know what he did with them. I was standing there. He took the coupons and laid them

on the counter and took the numbers of them. It might have been an envelope like that; I cannot tell.

Q. Mr. Larkin has testified that there was an agreement between him and Mr. Bransford by which you could do this: That you could leave your coupons on deposit with Mr. Bransford and pay your money under protest. I want to know whether you were present at that agreement?

A. I know nothing about it. I have no interest in this case. I was not interested at the last trial more than I am now. Mr. Bransford said he would not take the coupons, and I offered him the money, and he would not take it. On the last time I paid the money under protest Mr. Bransford did not say anything. I saw a dozen people standing on the porch. Mr. Bransford simply extended his hand, and took the coupons and money, and made no response.

page 35 } Bigbee.

On the 30th of April, 1888, I went to Mr. Bransford's office and paid for my license, and he did not want to receive the money or coupons or anything else, and I went back to Mr. Larkin's office. I had a check first, and, it appearing that we might have some trouble, I went to the bank and got the check cashed, and got regular bank bills, United States money, and told Sam Withers we had to pay our money under protest, and wanted cash. I went back to Mr. Bransford's after a certain length of time, and paid the money and offered the coupons, and paid the money under protest. I handed Mr. Bransford the coupons and he took the coupons, and I handed him the money under protest. That is all I said. I asked him for a receipt, and he said he would not give me a receipt except for identification and verification, and I went to Nowlin, and he gave me a receipt for the money. I asked him to receipt it under protest, and he would not do it, and Mr. Larkin was standing at the counter and told me Mr. Nowlin would not receipt under protest, and he said that is all right; we paid it under protest. Mr. Callan and a good many others were present, also Mr. Lazarus.

Cross-Examined.

I went up with Mr. Larkin. I do not know what transpired in the Pat Callan case. I don't know anything about the case of Pat Callan at all. I was not there when Mr. Bransford refused to take his money or the coupons. I asked him for a receipt, and he would not give me a receipt except for identification and verification. I did not pay any attention to what the words meant. I remember that he said it. The first time I testified was last fall, I think. I was here one time and went home sick. The judge told me I could go home. I do not know when it was. I remember nothing of last June. Mr. Larkin did not tell me he did not want me. I asked the judge if he would let me go home, as I was sick. I came to you

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and told you I was sick. I was here a long time, but did not testify. The first time I testified was last fall. I do not remember Mr. Bransford saying anything in response to my saying I would pay under protest. I asked for a receipt and he did not give it me, and I went to Nowlin and got a receipt from him, but not under protest; he would not sign it under protest.

Q. Had you not heard Mr. Bransford say twelve months before that he had stopped giving receipts in cases?

A. No, sir; I did not hear him say that.

Q. Are you sure that Mr. Bransford made such remark to you, that he was only giving receipts for identification and verification?

A. I am sure of that. I did not know anything of any other case than this.

Re-Examined for Plaintiff.

Q. Mr. Burroughs drew out something about giving receipts, and made you answer. I don't whether the stenographer got it. I ask you to repeat what was said about giving of the receipt under protest the year before; did he do it the year before?

A. He gave me a receipt the year before under protest. I have got the license and receipts at my office.

page 37 } Johnson.

On the 30th of April, 1888, I went to Mr. Bransford. He would receive neither money or coupons. Mr. Larkin told me that he would bet he would take them. In an hour after that I went back and he took it under protest. I paid him the money and got my receipt and the coupons with it. He took the money and coupons. I said that I paid the money under protest, and I got my license. No receipt was given for the coupons.

Cross-Examination.

The first time I went I did not do anything. I think Mr. Larkin was—of course, he was there the first time. I am not interested in this case at all. I cannot say that I authorized Mr. Larkin to bring suit against Mr. Bransford. Mr. Larkin was with me the second time. I got no receipt for the coupon, but got my license. We aimed to pay our money under protest. Mr. Bransford took the money under protest. Mr. Bransford knew I paid the money under protest, because I told him so. I said to him that I paid it under protest. I do not recollect what he did say. Mr. Larkin was at my left-hand side at the time. I was thinking more of getting my license than anything else. He was bound to hear my remark about paying under protest. He answered, but I cannot recollect what he said.

Q. Did you hear Mr. Bransford say at any time that he would receive the coupons in no other way except for verification and identification?

A. No; after I got my license, I did not go back. I did not hear any such remark as that.

page 38 Q. Did you hear any agreement entered into between Mr. Bransford and Mr. Larkin?

A. No, sir; I am not positive whether I was there when Pat Callan was. There were several in there. I do not recollect whether he was present at that time.

Cheatham.

I went to Mr. Bransford's on the 30th of April, just about 2 or 3 o'clock, and tendered the coupons, and I paid the money under protest. Mr. Nowlin and Mr. Bransford were both there at that time. "Well," he says, "you will be sorry for this; your license will be higher next year." That is about everything that passed, I think. Mr. Elliot (?) was in the room, I think, at the time, but I am not positive. I purchased the license for a brother of mine, not myself.

Cross-Examined.

I cannot say whether Mr. Bransford or Mr. Nowlin made the remark. He said, "You will all be sorry for this next year; your licenses will be probably higher." He referred to paying with coupons. I am not positive whether it was the 30th of April or the 1st of May. Why I recollect so definitely what I said to Mr. Bransford was because of his remark to me. It made an impression on my mind, because if I was going in the business again my license would be higher. I might be attending to a transaction of this sort for myself sometime. I am interested in my brother to some extent, and that is how I kept it in my mind. I do

page 39 recollect paying under protest. He or Mr. Nowlin said in response: "You will all be sorry for this; your license will probably be higher next year." The remark was made in the office. I suppose Mr. Bransford was responsible for who said it. They were not very far apart. I was across the desk from Mr. Bransford or Mr. Nowlin. Either one who made the remark was bound to hear it. Mr. Bransford was close enough to have heard it. I do not know anything of this case of Pat Callan's, and do not know about any agreement between Mr. Bransford and Mr. Larkin. My brother is not interested in this case, and I am not.

Lazarus.

On the 30th of April or 1st of May Mr. Larkin tendered coupons for me, and paid the cash under protest. That is all that occurred, that I remember. I was present. Mr. Larkin was standing at the desk. It was the first time I ever tendered coupons. I handed him a check for the amount. I went there with my application for license, and had Mr. Larkin attend to it.

Q. Why did you charge your mind so particularly with little things that were done and said, that could not appear to be of any importance to you?

A. It was at that time. Mr. Bransford said nothing at all; he took the check and marked the application. I was there myself that morning. I do not remember what day, the 30th of April or 1st of May. I know nothing of the case now trying. I did not hear any agreement between Mr. Larkin and Mr. Bransford about this case. I am not interested in this suit that I know of.

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Re-Examined by Plaintiffs.

The first year I went there I think I paid cash; the second year I think Mr. Larkin tendered coupons for me. I was right close, and Mr. Larkin was with me in the office. I do not know about any arrangements between Mr. Bransford and Mr. Larkin at all. Mr. Larkin merely mentioned that he tendered the coupons in my case as in the other cases, and paid the money under protest. He had the coupons in his hands.

Re-Cross-Examined.

Q. Did anything arise when you were making your tender to call forth a remark of that sort, saying he was doing in your case just as he did in other cases?

A. When I went to pay the taxes he said: Mr. Bransford, I tender the coupons in this case as in other cases.

Q. In other words, did you see any necessity or reason why he should say "in other cases"?

A. I did not.

Gregory.

I was at Mr. Bransford's office on the 30th of April or 1st of May, for the purpose of paying my brother's State tax. I tendered the coupons to Mr. Bransford, and paid the money under protest. He made no objection. He received both and issued the license. I handed him the money and coupons both, and told him I paid the money under protest. He received them both. I was waiting there until there was some other cases waited on there. I heard them all tell Mr.

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Bransford the same thing, that they paid the money under protest. I do not remember any of their names. There was an understanding between me and Mr. Larkin that I was to pay my money under protest and tender the coupons and get the license. I got no receipt for the coupons. I only got the license.

Cross-Examined.

I have no interest in this case of Gregory vs. Bransford. I was not aware suit had been brought in my name. I made the tender myself

in Mr. Larkin's presence. I had agreed with Mr. Larkin that I would do it this way.

Q. Are you positive that you told Mr. Bransford that you paid under protest; or is it probable that because you agreed with Mr. Larkin that you would do it in that way that you now think you did it that way?

A. I recollect very distinctly that I did say it; it was to Mr. Bransford. He made no reply at all. I did not see him put the coupons in envelopes like that [produced]. I saw them go through his fingers as he counted them. I do not know what he did with them. I know nothing about Pat Callan's case. I did not hear any agreement entered into between Mr. Larkin and Mr. Bransford. That was before I got there. I heard some talk of it at the office that morning. I heard a report as to what transpired at the office that morning the first time I went down there. I heard several parties talking of it. I was not present, and did not hear anything of the agreement myself. I was not present at the time the licenses were gotten out in this case we are now trying, and know nothing about it. I think it was either the 30th of April or 1st of May, I don't know which.

page 42 } Re-Examined by Plaintiff.

I heard them talking of the controversy to receive the coupons and money that had occurred in the office that morning. It was talked by several parties in the room, and I suppose he could have heard it if he could hear anything at all. I was not aware of what transpired that morning until I got there and heard the parties talking.

Fealy.

When I went down on the 30th of April or 1st of May to Mr. Bransford's office, we tendered our coupons, and he refused to take them, so we went home and come back in the evening and tendered my coupons and paid him the money under protest. He received the coupons and money both. I never paid any attention to anybody else's business but my own. I cannot say how many were there. I am sure I told him that I paid him that money under protest, and he received the coupons and money. I have given that statement up here once or twice before.

Cross-Examination.

I tendered the coupons and paid the money under protest. If I testified before that I paid the coupons under protest I meant I paid my money, and must have got it backwards. I cannot say what Mr. Bransford said in response; I did not pay much attention. I said, I want to tender my coupons and pay my money under protest. I spoke that loud as I am now speaking. He made no response that I could hear. I cannot remember that I saw Mr. Bransford take the coupons and put

page 43 } them in an envelope like that. When I was there in the morning he would not receive them. I cannot say for certain whether he said it or not about verification and identification. There was a crowd talking outside. I know nothing about the Pat Callan case. If I heard any agreement between Mr. Larkin and Mr. Bransford, I did not pay any attention to it. I cannot say for certain. I cannot testify as to any arrangement; I have no interest at all in this case. I never did take much interest in it. I did not —— suit had been brought against Mr. Bransford. I did not know about a suit.

Thomas N. Larkin.

I assisted my brother, W. W. Larkin, on the 30th of April, 1888, and also on the first of May, and I counted out the coupons for most of the men. We had two kinds of coupons, one with bonds and one without bonds, and the coupons without the bonds it was our understanding to pay under protest, as we had no bonds, and the others are sent for identification and verification, because we had bonds to prove them. I was in the office, and I suppose some six or seven men—I don't know who they were—went out with my brother, and in a few minutes he came back and said Mr. Bransford had refused to receive even money under protest. [Objected to.] Afterwards, in the afternoon of April 30th, I went down, under instructions from my brother, with some parties, and offered the coupons, which Mr. Bransford refused, and I then tendered the money under protest as the others were tendered, as per agreement with W. W. Larkin. I understood the

page 44 } agreement from him, not from Mr. Bransford. I reiterated the agreement: These coupons are to be deposited and kept here according to the agreement, and these others are to be sent up. I had the bonds for those, and so made the distinction to Mr. Bransford that some were not produced and some were to be sent up for verification. I do not know how many parties I went with. It was understood with us that he or myself should come. I went there probably two or three times. I did not go with Mr. Pat Callan. He went in the morning, about 11 or 12 o'clock. I tendered the money under protest, and referred to the agreement, and drew a distinction between the coupons. I was perfectly aware of the distinction, and knew how to transact it. We had two kinds of coupons—at least, the same kind of coupons, but with one we had bonds and the others we had not bonds with coupons. I handled most of the coupons in the office. We kept the bonds that we had coupons to separate from the coupons we had no bonds for, and it was understood that the coupons that we had no bonds for should be paid under protest, and they were so received by Mr. Bransford every time I carried them down there, because I reiterated and referred to the understanding, and I had the coupons with the bonds —at least, I did not carry any bonds down there, but I knew we had the bonds, and they could be got at. I reiterated and told Mr. Bransford I wanted these coupons sent up to the court; the other coupons

that we deposited, according to the understanding between him and William, as I knew we had no bonds to prove the others, and I knew it was an understanding between my brother that these coupons should be deposited there to keep Mr. W. W. Larkin from depositing them twice. He had about $15,000 or $18,000 in the bonds, and we laughed about it. I dont know whether Mr. Bransford heard me or not. They were fixed up in the office. Those with bonds are the ones I told Mr. Bransford would be sent up for identification. These are paid under protest, and as far as I know were marked "under protest" before they left the office. We had a good many cases. We put them in envelopes and fixed them that way because we wanted to keep them separate, and we put them there as a guide for Mr. Bransford. We brought these envelopes back. Mr. Bransford had the envelope every time. The coupons were sometimes in them, and sometimes I think we took them out. We always handed the envelope to Mr. Bransford, and he took his memoranda from them. He gave no receipt. I never demanded a receipt from Mr. Bransford. I know very distinctly that I reiterated and alluded to the agreement, and Mr. Bransford seemed to understand, and he did not say anything to the contrary; he did not say, I have no agreement. I reiterated the agreement between my brother and himself as to the understanding, and he did not dissent to take the money under protest. I paid the money always under protest, and knew what I was doing, because we had talked the matter over in the office. The coupons we had no bonds for, the money had to be paid under protest. I knew that. I went down there, and was very particular, and went over it with Mr. Bransford, and knew it was a matter of importance that this should be transacted intelligibly. I was so particular about the thing that on one occasion I had coupons with bonds and coupons without. I handed them to Mr. Bransford and he misunderstood me, and he asked me over again and he made a memorandum, but I saw him tear up an envelope as if he had made a mistake and put one coupon over, and he asked me over again and I reiterated, to keep him straight: These coupons I deposited and the others are sent to the court for verification.

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Cross-Examined.

Most of the entries in that book are in my handwriting. As a usual thing, I fixed up the coupons in the envelopes and made the entries in the book before I went to Mr. Bransford. I did not leave the envelopes with him, because I wanted them as a memorandum for myself and brother. My brother told me to bring them back myself. My books were a memorandum, I know, but my orders were to bring back the envelope. We brought them back on account of the endorsement in the middle of the envelope, I believe. Mr. Bransford took them and used them for his purposes, and then handed them back. I say that, as far as I know, those entries were made before they went down

to Mr. Bransford. I have recollection that most of them were there, and if it was left undone it was an inadvertency. I did not make any entry on the back. There may have been some it was not on. Mr. Bransford took the coupons out of these envelopes and handed them back to me, and I took them back and put them in a drawer in the desk as a memoranda. Mr. Bransford examined them and returned them to us. That is the only object I saw. I did exactly as I was told. I went on two or three occasions and returned again. I recollect especially J. J. Reynolds and Mr. Furguson, and reiterated this contract, as I understood it, to Mr. Bransford. I told Mr. Bransford: "These coupons we
page 47 { have no bonds for; we pay the money under protest." The word "deposit" had been put in my mind by what Mr. Larkin had repeated as coming from Mr. Bransford, and I remarked, "I want to deposit these coupons according to agreement or understanding with my brother." I paid several of them with bonds, and several without. I have alluded to this circumstance when I have testified before, because I transacted the business and did it as I was instructed. I was not present when Pat Callan's case was attended to. I counted out the coupons for him. I did not know about the agreement between my brother and Mr. Bransford, except what I heard from my brother in conversation with Judge Latham, and then I understood it well, and we debated the question at interviews, and I went down there understanding that to be the agreement. Mr. Bransford did not tell me he had not an agreement with Mr. Larkin; he did not tell me he had an agreement with Mr. Larkin. Mr. Bransford simply said "Yes," and took my coupons, which left the impression on my mind just as strong as if Mr. Bransford had said it. I went down to carry out the understanding, and Mr. Bransford did not say, "I did not have the understanding." He simply took and carried out my understanding in his acts. I understood a certain matter to be an agreement, and I went down and reiterated to Mr. Bransford that agreement, and Mr. Bransford never said anything but what carried out my understanding of that agreement. It was on the 30th of April I offered the coupons to Mr. Bransford. Generally he has a way of putting his hands out to take them, while I said, "Here is the money; the coupons I will deposit as per agreement." I paid some on the evening of the 30th of April; I don't know how many. So many men came in the office; some made
page 48 { an impression on my mind and some did not. I went down once or twice in May. I went down with Mr. Plunkett on one occasion, and we had some cases for him, which are marked "P" on the book, and Mr. Plunkett went with me to see that they were paid right. There were always two of us went together as a general thing. It was on the evening of the 30th when I paid J. J. Reynolds. I paid more licenses with coupons with bonds than I did without the bonds. I do not think I paid more than two or three without bonds. I cannot recollect whether I paid more than that or not, but I paid several with bonds. I know on one occasion I had two batches.

Plunkett.

I had some cases of my own, which I turned over to Mr. Larkin. I cannot tell whether they were any of these cases without refreshing my mind from the papers. We were fixing them up in the office with little envelopes, and these cases that he was fixing for me he gave me to carry down to Mr. Bransford, as he was very busy, and it was late in the afternoon, and wanted to go down before Mr. Bransford closed up. Here is one case I remember. I put my name on that at that time. That is exactly as I carried it to Mr. Bransford. [Read "W. J. Irwin (?) license-tax 30," "under protest,"] I put "C. T. P." to refresh my memory. I suppose Mr. Larkin kept them for reference. He was in there when I carried it down there. [Mr. Burroughs objects to above testimony as irrelevant.] I am satisfied it was very early in May—probably the first week, because we were hurrying to get the cases in. [Plaintiff reserves the right to bring back witnesses after production of the books] I went down there and told Mr.
page 49 Bransford that I would tender these coupons as Mr. Larkin had done, and tendered the coupons and paid the money under protest. He would not give me a receipt for it, except in case of identification and verification. There was a direct allusion to the arrangement that he had with Mr. Larkin. I stated to him that I wanted to pay under protest, as Mr. Larkin had in other cases. I carried this envelope down. I remember the case because I made the note on it. It is my impression I asked for a receipt, and he said we only give receipts where they are for identification and verification. I always got receipts in those cases where I tendered for identification and verification. There was no question about that at all.

Cross-Examined.

I think I have said before on this witness-stand about verification and identification. I think I took coupons down there in one or two cases—two cases in all.

Q. You say that on all the envelopes there was written, either "with bonds" or "under protest." How came you to take that down at one time, and took one other down for Mr. Larkin?

A. The same evening, my impression is, I took down one other case. I took this down because it was a case of my own. I went to get him to furnish the coupons. He paid coupons against my judgment, as I paid my own with the bonds, and I did not want to use the coupons when he could not produce the bonds. He took the responsibility. I saw them in his office. I was not present when he made the tenders to Mr. Bransford. I do not know anything of this case that we are now trying of Callan's. When I tendered them to Mr. Bransford I told him that this was one of Mr. Larkin's, and that I ten-
page 50 dered them and paid under protest. I cannot identify those envelopes, but some of them I have made memorandums on.

Those were my cases, and are marked "with bonds." I did not make that memorandum of June 6th, 1888. That is my handwriting and those are my initials. I put my initials on just to refresh my memory when paid under protest. I remember distinctly making the Irwin trip. I do not remember especially taking any down for Mr. Larkin on another occasion. I remember making this memorandum. I did that when I turned them over to Mr. Larkin.

M. Kegney.

I was concerned in the payment of the license tax last year. It was the liquor-license tax that I paid. It was the regular license day. I tendered the coupons and paid under protest; at least, Mr. Larkin mentioned that to Mr. Bransford. I heard him mention to Mr. Bransford that he tendered the coupons for my license and paid the money under protest. I was standing at the end of the desk, and he spoke for me. There were a good many there paying tax. I don't remember who. It was in the evening, if I am not mistaken. I do not remember the amount of the tax; it was for license.

Cross-Examined.

I do not know what day it was; I think it was the first of May. I know nothing about Pat Callan's case. I did not authorize any one to bring suit against Mr. Bransford. Mr. Larkin spoke for me, and said to Mr. Bransford he tendered the coupons and paid the money under protest. I did not hear him say anything in response. He was giving his attention to some papers, and I did not hear him say anything.

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Ferguson.

I was doing business with J. J. Reynolds, my partner, in the liquor business, at Ninth and Lynch street, and I went to Mr. Larkin's office, on Main street. Mr. Thos Larkin and myself went to Mr. Bransford's office. I went back. Mr. Larkin said to Mr. Bransford, "I pay this money under protest."

Cross-Examined.

Mr. Reynolds, Mr. Larkin, and myself went down. Mr. Larkin said to Mr. Bransford, "We pay this money under protest." I did not see any coupons. Mr. Bransford handed the license back. It was Mr. Larkin, not the lawyer.

J. H. Jackson.

At the last gone May, 1888, I remember going with Mr. Larkin and tendering coupons for me to Mr. Bransford, and giving him money.

He refused my coupons first, and we paid the money. He afterwards took the money and coupons both. I know nothing about what was said or done. The money was paid under protest; that is what he told Mr. Bransford at the time, that he paid the money under protest.

Cross-Examined.

I think it was the second day of May. If I am not mistaken the first of May was on Sunday. I know nothing about the case of Pat Callan. I know nothing about any agreement between Mr. Larkin and Mr. Bransford. I am sure I heard Mr. Larkin say when he
page 52 paid my license that he paid it under protest. That is the only time I was there. He refused to take them when I was there. He would not take them, and I gave them to Mr. Larkin. He offered the coupons first, and he refused to take them. I had money, and he told me he would pay him under protest, and he took the coupons and the money.

R. A. Langley.

I applied on the second of May to Mr. Larkin for coupons, and after getting the amount from him, he said to me, "I will put them in envelopes, and will go with you to Mr. Bransford, and we will tender them under protest." When we got down to Mr. Bransford's I heard them all in conversation, but did not notice what it was—I suppose in relation to the coupons, and afterwards you said to me, "Langley, come up and pay your money." I came up then and counted out my money, one hundred and some odd dollars, to Mr. Bransford, and what he did with the coupons afterward I do not know. There was nothing said about the payment of the money, more than Mr. Larkin told me to pay, and I paid. I do not know what transpired between Mr. Larkin and Mr. Bransford. I was under the impression that he was tendering coupons; afterwards he said, "Come up and pay your money."

Cross-Examined.

I know nothing about Pat Callan's case. I did not know I had a suit here against Mr. Bransford. I did not authorize one, and did not know it was brought.

page 53 Re-Examined by Plaintiff.

I did not expect to pay coupons and pay money and get nothing back. I thought the tendering of the coupons was necessary, and I would get the money back; if they took the coupons, they would not take the money, and so I carried both. I have seen that envelope before. It is the one Mr. Larkin put coupons in.

Re-Cross-Examined.

I assigned my claim to Mr. Larkin on the day that I got the coupons, before this suit was brought. I do not know exactly that that is the same envelope, but it resembles the one I presented to him. I know it was a yellow envelope. I think that is Mr. Larkin's handwriting. I cannot say that I am familiar with it. Mr. Larkin had it in his hand all the time. When he was fixing it up I was standing right over, looking at him. I think I read what was on the back; a certain amount of coupons, and the deduction, I believe. I think there was nothing else on the back. Mr. Larkin had called my attention to the color of the envelope. I went over and got an envelope, and he said, "Get the yellow one," and he made a memorandum on it in my presence. I think that is the envelope. I did not notice whether that "under protest" was written on it or not. I looked to see what amount of money I had to pay. I heard him say before coming from the office that we would go down and pay it under protest. He said, "Now, let us go down and tender this under protest for you."

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C. H. Parsons.

I went to Mr. Bransford's office with Mr. Larkin to get a license with coupons. We tendered the coupons and paid the money under protest. I think it was the second of May.

Cross-Examined.

Mr. Bransford did not say anything. Mr. Larkin made those remarks to Mr. Bransford. Mr. Larkin handed me the coupons. I do not know anything of this case of Pat Callan's. I am not aware that I have a suit against Mr. Bransford. I made that assignment the same day as I got my license.

Plaintiffs introduced extracts from books of treasurer showing transactions on 30th of April.

Extracts from journal of W. W. Larkin, containing assignments of claims, put in evidence on order of judge.

Plaintiffs read letter of 30th of April, 1888, to Col. Morton Marye. Auditor of Public Accounts; also, copy of telegram as made by Thomas Larkin.

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Defence.

J. W. Bransford, being first duly sworn:

Q. A letter has been introduced here, dated the 30th of April, 1888,

written by you to Col. Morton Marye. I want you to look at that letter, or copy of letter, and state what transpired between you and Mr. Larkin, and whether that letter was written before receiving the coupons or money?

A. This letter was written late in the day. It contains my weekly statement with the Auditor, which I have to make every week (every Monday) of all moneys received on the part of the State.

Q. Mr. Bransford, I notice here "parties have commenced this A. M. to tender coupons and money under protest, which I refused, and they will not leave the coupons to be presented in court by me," &c. When you wrote that letter had they commenced paying the money and giving to you the coupons, and getting out the licenses?

A. They had. I had received some of them. In the early morning when they commenced to tender coupons I refused them positively. I refused to receive them under protest, and I refused to receive the money also under protest—that is, I refused to receive coupons with the money under protest.

Q. They have testified about two different times that they went to your office on the 30th of April. The first time they went they did not leave the coupons or money, but the second time they did leave the coupons and money?

A. Because I had proposed to receive the coupons under Coupon-Killer No. 1, which required their paying the money and my receiving the coupons for identification and verification. That was my page 56 proposition after I went to interrogate you. I strictly adhered to that purpose and none other. I positively refused to receive money under protest.

Q. Did you receive from this party, Pat Callan, or any of these other parties who have testified, who got out their licenses, coupons and money in any other way except under Coupon-Killer No. 1?

A. I did not, sir; I think Pat Callan tendered this envelope in person. Mr. Larkin tendered some in person.

Q. I want you to tell the jury, if you received them under Coupon-Killer No. 1, what you did with the coupons?

A. I received them and put them in envelopes, and those that I did not mark I did it at the request of Mr. Larkin, because the coupon would be mutilated. I had treated coupons that way before for Mr. Larkin. I received a good many from Mr. Plunkett that I did not mark at all. The envelopes used were such as that produced. I did that then and there in the presence of the parties. It was right before them. There was nothing to prevent their seeing them.

[Mr. Bransford then showed position of parties in regard to his desk.]

Q. I would be glad if you would state to the court and jury what conversation, if any, you had, or agreement, with Mr. Larkin on the 30th of April. He says that you had an agreement with him. State whether you had one or not, and, if so, what the agreement was?

A. If I had an agreement I never heard of it to my knowledge. I had no agreement with him.

page 57 } Q. Did Mr. Larkin and the parties he carried with him, when he first went to your office in the morning, adhere to their first purpose, or did they change and proceed some other way?

Objected to.

A. My recollection of the matter is the parties came in, and possibly some of them may have proposed to pay under protest, but in every single instance in cases in which they proposed to pay under protest I declined to receive it. I received coupons under Coupon-Killed No. 1 and received the money. If that "under protest" was on the envelopes I do not remember it. I did not observe "under protest" on any of them. If it had been written on them I think I should certainly have seen it. I placed the coupons in envelopes of this kind in every single instance, and the parties themseves saw me place them in. I then sent them up to the judge of this court. I have had no control over them since. They were sent to the judge in a few days, I think. He said he had no place to deposit them conveniently, and he would prefer my taking charge of them until some other time. Mr. Cooper, who, it seems, had the management of those that were deposited with Mr. Larkin by Mr. Royall, he was here to get those and take them down to Richmond. Part were selected out, and he punched them, and left others in your custody until some future time.

Q. Mr. Bransford, did you hear Mr. Callan, when he presented the coupons in this case, state that he paid under protest.

A. I did not, and if I had I should have refused the money and coupons. I did not hear any of them say it.

page 58 } Q. State whether anything was said or done which indicated to you that the coupons were tendered and the money paid under Coupon-Killer No. 1?

A. This was done for several days after the most of these cases had been tendered. Mr. Larkin said that there were some coupons in some of those cases that he wished to exchange for later dates. He came down and requested the privilege of abstracting those and replacing others of same *six*, and I gave Mr. Larkin the entire batch of envelopes, and he went over them and selected out such as he did not wish to exchange, and replaced others of the same denomination and of the same amount.

Q. I want to know if there was anything said or done at the time these several tenders were made that indicated that the parties were not proceeding under Coupon-Killer No. 1; did they say or do anything at the time?

A. They said or did nothing that I recollect.

Q. I believe that two of them, Mr. Plunkett and Mr. Piggott, asked for receipts, and you said you only gave receipts where the tender was for verification and identification?

A. That is very true, but Mr. Larkin had declined to receive receipts. I understood it as Mr. Larkin stated it. He tendered them for verification and identification. As to the coupons being marked, he requested that they should not be marked on account of being mutilated. I kept the coupons all together. I did not receive coupons except for verification and identification. I have received some under protest, and have always stated it in the license or receipt.

Q. What did you do with them?

A. I paid the money back.

page 59 Q. What did you do with the coupons that you received under protest?

A. I did not receive the coupons at all; I received the money under protest. I never have received coupons and money at the same time when money was received under protest. They sometimes paid under protest and did not leave coupons with me; they tendered and then paid under protest. I declined to receive money under protest. About two weeks before I had paid Mr. Larkin $8,777 in money in licenses that I had received under protest. I received the money under protest. The license is paid under protest.

Q. Did ever anybody before offer to pay you under protest and at the same time allow you to keep the coupons?

A. No, sir; none that I know of.

Cross-Examined.

That letter of 30th April contains a statement of my collections up to Saturday night. I think it was written late in the day, because we generally keep the letter open until the middle of the day. The letter may have been written early in the day, but the postscript was not added.

Q. This letter says, "Parties have commenced this A. M. to tender coupons and money under protest, which I refused, and they will not leave the coupons to be presented in court by me." That is the fact?

A. Yes, sir; I telegraphed about that afterwards. I received a reply and it did not amount to a row of pins. I went down to Mr. Larkin, and proposed to receive the coupons and money under Coupon-Killer No. 1, and he consented to it. It was he who changed.

page 60 Q. Mr. Larkin says that in all these cases where he paid them at all he paid them under protest. I understand that is not so?

A. No, sir.

Q. John D. Tanner, Mr. Bigbee, Mr. Johnson, Thomas Larkin, Mr. Phealey, Mr. Ferguson, Mr. Jackson, Mr. Langley, Mr. Plunkett, Pat Callan, all say they paid under protest?

A. I did not hear them. If I had heard them I would not have received it. I thought I had the right to refuse money paid under protest. I went to Mr. Burroughs, and he suggested that I should receive them under Coupon-Killer No. 1.

Q. Did you have any difficulty when these parties came down there to pay that morning? Did you have any difficulty about receiving coupons under Coupon-Killer No. 1?

A. They said nothing about paying under Coupon-Killer No. 1; they wanted to pay under protest. I did not suggest that they pay under that No. 1. I did suggest it to Mr. Larkin later in the day, and he acquiesced and paid under Coupon-Killer No. 1. That is my understanding. That is my book and here is where I recorded the transactions on that day. I began with Bigbee & Brother. That is the first item on that day. I marked it "L" coupons. Mr. Phealey is the next man on the list. I marked that "L" coupon. That "L" means Mr. Larkin's coupons. The next is Pat Callan's, and that is marked "L." The next is Wood (?), then Lazarus, Tanner, Gregory, Margrey, Johnson, John Helbig, R. H. Archer, Guggenheimer, Parsons, Jackson, Langley, Cheatham, L. E. Smith, R. S. Terry, L. M. H. Spencer, and Johnson, all marked "L," and then you skip page 61 over, and then Manning with "L" under it, nothing else, and then Mat Burn and others with "L," and so on. Mr. Plunkett then presented Beasley's and Ainslie & Co., in each case "cut from the bonds." All Plunkett's were "cut from the bonds." Larkin requested that they be marked, and I put them in that envelope because he requested me to do. I presume that is the envelope. In John W. Curley's case—in every case these coupons were marked. In these cases I marked them because he told me to mark them, and the others I did not mark because he told me not to mark them.

Q. The law says that whenever any tax-payer or his agent shall tender to any person, &c. [read from act Jan'y 14, 1882]. That is the law that you are bound to obey.

Objected to.

Q. You let Mr. Larkin dictate to you your duty under this law?

A. They were his coupons and his property; he had the right to dictate to me. That was done in every case.

Q. In the case of Gilliam & Co. Larkin marked, J. J. Reynolds Larkin marked, J. H. Ford Larkin marked, &c. In every case it was done by his direction?

A. Yes, sir; in every single instance.

Q. And yet he told you that he wanted these coupons presented under this law; he wanted to avail himself of this law for the purpose of having those coupons received for those taxes?

A. That is my idea. As to their being marked, that is a thing of no consequence, because such things have occurred before.

Q. Did you understand these coupons that were delivered to be marked were coupons for which he had bonds?

A. No, sir; I did not know whether he had the bonds for the coupons or not.

page 62 Q. And yet you say that in the morning you refused to receive, and in the afternoon you did receive them, but received them because he changed his mind and you did not change yours?

A. I would not receive Mr. Cooper's or Mr. Larkin's either, under protest.

Q. The coupons were never given to you under protest, but the money was paid to you under protest?

A. The money and coupons together I would not have received under protest. There was nothing that I considered as instructions from Richmond. I telegraphed to know what I should do. What he told me to do did not amount to anything at all.

Q. You did not know what to do yourself, and you called upon your head man to tell you?

A. He had not authority to tell me what to do; he told me what he would do.

Q. Don't you remember, Mr. Bransford, that Mr. Marye telegraphed you that if these parties tendered their money you were bound to receive it?

A. I do not know; I did not consider it as instructions, and did not go by it. I thought possibly that he would tell the Attorney-General, and send me instructions from him. That is the only kind of white envelope I had in my office at that time. We have another kind now, addressed to His Honor, Judge Diggs. That was the only coupon envelope we had. These parties all came in the morning and told me what they wanted to do. At first they wanted to pay under protest, and I would not receive it. They never paid under protest in my hearing in a single instance. I don't know whether they charged their minds or not, but they did not tell me they would not pay under coupon-killer. They all went away and all declined to pay. I page 63 would not receive it. Later in the day they came back and paid under Coupon-Killer No 1, as I understand it. It was reiterated over and over again in the office that these things were paid under Coupon-Killer No. 1, and no money would be received under protest. Those are Mr. Larkin's envelopes. They have been in his possession all the while. I saw them. I did not observe anything about "under protest" on them when they came to me. Mr. Larkin handed me the coupons, and I took them. I reckon my memorandum corresponded to this memorandum.

Q. Did not Pat Callan hand you this envelope in the form in which it now is?

A. Not with that endorsement on it.

By Mr. Burroughs: Mr. Bransford, have you any of this money in your hands now?

Objected to.

A. No, sir.

page 64 } Horner, of the Western Union Telegraph Office, Lynchburg.

Q. We have asked you to produce copies of two telegrams—one sent by Mr. Bransford to Morton Mayre from Lynchburg, and the other received from Morton Mayre from Richmond on the 30th of April.

A. They are destroyed. We send them every six months to New York, and they are destroyed.

page 65 } W. D. Nowlin, for Defendant.

I was present when Pat Callan and the other parties came to the office on April 30th last year. I see from the books that I entered it up. When Mr. Larkin first came down to the office I was not in. I was there when the transactions were made in which Mr. Bransford said that he would only receive the coupons for identification, and would not receive money under protest. I am going by the date on the book; it must have been the 30th of April. I do not recollect any particular response by Mr. Larkin to Mr. Bransford's remark; it seems he had made up his mind to follow Mr. Bransford's plan, and went home and paid accordingly. [Last part of this answer objected to as not responsive to any question asked witness, but admitted by the court.] The envelope produced and shown to me was altogether the sort of envelope we used by us in that case. We only used that kind of envelope where coupons are for identification and verification. These were handled in the presence of Mr. Larkin and other persons and the coupons put in as the case came up. Mr. Larkin and the others could have seen them put in the envelopes and marked that way [referring to mark on envelope.] They could not help seeing; they were close to them. They did not make a word of objection. Mr. Larkin made no objection. The coupons were tendered and the money paid to Mr. Bransford while I was writing, and I did not hear a single remark of the kind made that they were offered under protest after they got the point settled and fixed up. I do not remember a single instance in which it was said that they were paying under protest. I recollect this, that I made a suggestion on several occasions.

page 66 } "This goes along with the others under No. 1, or under protest, or for identification," and Mr. Larkin said Mr. Bransford and myself understand each other, and we do not want you. I did not hear any agreement between them any further than Mr. Bransford said distinctly that he did not intend to receive them in that way—that is, under protest. Mr. Bransford summed up the coupons to see that they agreed with Mr. Larkin's estimate, and placed them in these envelopes. That is the envelope that Pat Callan's was put in. That is Mr. Bransford's handwriting. I brought that into court. [Objected to.] I did not bring that this morning. I do not know how it got here. After the coupons were put in these envelopes and marked, they

were sealed up and kept in the safe until they were ready to be delivered to the judge, and then I brought them and delivered them to the judge, and have his receipt now in my possession. [Receipt produced.] The plaintiffs in these suits commenced paying on the 30th of April, and they reached along into May. [By the Court: The receipts will not be allowed in evidence, as they have nothing to do with the case.] [This ruling excepted to by plaintiff.] I do not recollect the number of cases. I think they are all listed down. There were a great many cases that come up on that occasion during the time that they were paying, and I cannot answer without referring to the receipts. Mr. Plunkett brought some bonds in and cut the coupons off in Mr. Bransford's presence. We kept them all alike, kept them all together, and brought them here together, and some were accepted, and some the judge told me he had no place *for* keep them in, and told me to bring them back until they needed them. [That part about what the judge told him to be struck out.] page 67

Q. Mr. Nowlin, some of the witnesses for the plaintiffs, including Mr. W. W. Larkin, testified that these batches of envelopes were used in making tenders of these several claims. I would be glad for you to look at those envelopes and state whether there was any mark on them as you see written across the middle. [It is admitted that these envelopes are in evidence.]

A. I did not notice the envelopes particularly, because I was entering up the applicants on the book at the time, although I saw the envelopes lay there. I do not recollect to have seen any note across the middle, and at the same time I could not say that it was not there, because I did not notice them. I did not see any writing "under protest." I saw no writing at all. If it had been written on them, it would seem to me that I would have seen it on some of them.

Q. One of the witnesses, Mr. Cheatham, testified yesterday that when he applied for his license he tendered his coupons to Mr. Bransford and paid the money under protest, and that you were standing close by him, and so near to him that you might have heard what he said; that he paid the money under protest; that he turned to you to get his license fixed and get his receipt, and that you remarked to him that he would regret this, that their licenses would perhaps be higher next year, indicating to him that you heard the remark "paid under protest." I mention this circumstance to refresh your memory; do you remember any such conversation, and, if so, what did you mean by the license should be higher?

A. I do not recollect making a remark of that kind. I have made this remark in using coupons at all that it would result in an increase of taxation for licenses. I do not recollect hearing Mr. Cheatham say anything about "under protest," or a single individual making any remark that he was paying under protest. page 68

Q. Take that book and look at those entries, and state whether there is any mark to distinguish these cases here from the other cases, and, if so, why that mark was put there?

A. I notice some of them are marked "L. marked"; that indicated Mr. Larkin had requested Mr. Bransford to mark them. I mean putting the initial of the party tendering and the date on the back of the coupons.

Q. State whether Mr. Larkin had asked Bransford to mark those, and why it was he did not mark the others if any others were not marked?

A. I cannot recollect the exact words, but I know Mr. Larkin at different times had asked him to mark certain coupons, and the others he said he did not care about, and he said he did not care about receipts. I do not recollect exactly now whether he asked in every case or whether the offer was made in every case, but there were some of them that Mr. Bransford gave receipts for and some he did not, and some he marked and some he did not, and this according to Mr. Larkin's wishes.

Q. State whether before that transaction with Mr. Larkin, if you were in the habit of obeying his suggestions about these matters as to whether you gave receipts or not, or marked the coupons?

Objected to as irrelevant and improper.

A. It was not unusual for Mr. Larkin to have those transactions without taking receipts, and sometimes I think they were not marked.

page 69 } Cross-Examination.

I was not there that morning when these parties first came. I know nothing of what occurred but what Mr. Bransford told me. I was there when the coupons were received and the money paid. Mr. Bransford did not have half a dozen words to say; he had adopted his stand, and had announced to Mr. Larkin what he would do—less said than I ever heard before.

Q. I want to know what Mr. Bransford did tell Mr. Larkin in your presence, as you understood it, when he came back the second time?

A. He told him he had not changed his mind; that he was going on just as he told him in the first part of the morning.

Q. Did he, in your presence, at that time, when the transactions commenced, say to Mr. Larkin that he would not receive except under Coupon-Killer No. 1?

A. I do not recollect exactly how he expressed himself, but he did it in such a way as to indicate that he would not take them in any other way.

Q. You have said that when the transactions commenced you had heard what took place in the morning with Mr. Bransford. That is evidence. We wanted to get all of that out of your mind. What we want to do is to confine your testimony exclusively to what occurred when the transactions commenced. Did you hear Mr. Bransford say to Mr. Larkin that he would not receive these coupons except under Coupon-Killer No. 1, and except for identification and verification?

page 70 A. That is the purport of what he said, and he might have said that he would not take money under protest, or he may have said for identification or under Coupon-Killer No. 1; but that is the purport of what he told Mr. Larkin. I am very certain that he said it in my presence.

Q. Are you not confounding your recollection of what Mr. Bransford told you had passed in the morning with what actually did occur later in the day?

A. I do not think I am. Mr. Larkin came there the first thing in the morning and then went off. When I came in from the bank Mr. Bransford told me what had passed, and some time during the morning Mr. Larkin came back again there, and then it was that Mr. Bransford, I am very sure, repeated to him that he would not take them as he had done the year before.

Q. You did not confound what took place then with what Mr. Bransford had told you had taken place in the morning?

A. I do not think I do. I am pretty sure I heard him tell Mr. Larkin that Mr. Bransford sometimes spoke out in one way and sometimes another; that he would not take the money under protest, sometimes under Coupon-Killer No. 1, and sometimes except for identification and verification, and either one we understood to indicate the same thing. I heard him say distinctly that he would not receive money under protest. He telegraphed to the Auditor. I saw the telegram. He had written a letter in the fore part of the day, and then, upon consulting with Mr. Burroughs, I think he decided that it would be the better plan to get a telegraphic answer instead of waiting for the mail. The letter was written after I got back from the bank a little after nine A.

page 71 M. The purport of the telegram was the same thing as in the letter, except shorter, announcing that they wanted to pay money under protest, and he had refused to, and asking was he right about it. He got an answer to that telegram. I think the answer was, if the money was tendered under protest, he would have to receive it, or ought to receive it, or something of that sort. The object of the telegram was to have this question ——— as soon as possible. A number of these transactions commenced before the telegram came. The telegram did not come until after two or three o'clock in the evening. I know we had a large number of transactions before the telegram came. I did not state at the December court that he did not act until he got that telegram. I reckon the transactions commenced about ten or eleven o'clock. I know it was after I came back from the bank. I do not recollect what time the telegram was sent, but the answer, I think, came about two or three o'clock. [Copy—telegram produced and admitted to be a copy of the original, and same was read.] That was about my recollection of the purport of it. He did not wait for this. He had transactions before twelve o'clock, I think. I wrote the letter; it was written early in the day, between 9 and 10 o'clock; not later than that. I cannot tell whether there had been transactions up to that time.

Q. Did not you say that after writing this letter, and after this morning interview, he went to see Mr. Burroughs, and that it was thought better for him to telegraph and get an answer by telegraph?

page 72 A. I do not know that it was after that letter. I say that after that interview with Mr. Larkin he went to see Mr. Burroughs, but whether it was before or after writing that letter, I do not remember. He went to see Mr. Burroughs before he had any transactions at all.

Q. You say that after seeing Mr. Burroughs he was advised and decided that he would not wait for the answer to that letter, but would telegraph to get an answer by telegraph from the Auditor?

A. That was what he did. He had several transactions before the answer came.

Q. Are you certain of that, because it is an important matter. He went to see Mr. Burroughs and got his advice about it, and then telegraphed to the Auditor in order to get a reply by telegram and not wait for this answer, and yet you say he went on with the transactions before he received an answer to the telegram?

A. Yes, I am pretty sure of that.

Q. This letter says that the parties had commenced this A. M. to tender coupons and money under protest, underscoring those words "under protest." You wrote that letter?

A. Yes, sir.

Q. You say, I understand you, that after this had occurred, and after he consulted Mr. Burroughs, and after he telegraphed to Richmond for instructions, that they proceeded to tender their coupons and to pay their money under protest?

A. Yes, sir; and I never heard any statement that they were made

page 73 under protest. I never noticed any endorsement upon these coupons that they were tendered and the money paid under protest. I do not think I was present when Mr. Bigbee paid his taxes. That is my writing. I must have been present.

Q. Did you make the entry as the thing occurred, and not afterwards?

A. No, indeed; Bigbee was the man who first commenced to pay. The book shows that that marginal note is in Mr. Bransford's handwriting. I suppose the only way that I can account for that being in Mr. Bransford's handwriting that I could not make the marginal notes as they came along, and made notes afterwards.

Q. Mr. Bigbee was there, and you were there, and Mr. Lazarus and Mr. William Larkin and Mr. Gregory and Mr. Phealey and Mr. Tom Larkin and Mr. Ferguson, J. H. Jackson, R. A. Langley, and C. T. Plunkett were all there in the course of time when these transactions occurred. Now these gentlemen say they paid under protest and said so. Mr. Larkin says so and these other parties say so. You say you did not hear anything of the sort?

A. I do not recollect a single instance of one of them saying it. I was not particularly attending to what they did say; I was busy writ-

ing and filling up blanks of the applications, which would keep me going as hard as it could while the transaction was going on. I was writing on that book, and just passing papers backwards and forwards and calling out the amounts, and exceedingly busy, and doing writing all the time, and attending to what I was doing, making memoranda and making out applications for licenses. All of that had to be done by me, and considerable writing also. I say again I never heard the words "under protest" mentioned. I heard Mr. Bransford say he page 74 would not receive under protest. That was before he commenced receiving. During the day Mr. Bransford had very little to say indeed; sometimes I would throw in a word when Mr. Larkin was there. "I suppose it is under Coupon-Killer No. 1." He said, "We do not want anything from you; Mr. Bransford and I understand each other."

Q. You say that these marks—marginal memorandums—was it put there by direction of Mr. Larkin?

A. After those first ones, we did that to indicate whether they were coupons or not, and who was the party tendering them. You will notice further on that the word "coupon" is dropped, and we did it because we thought it was superfluous, and put "L," which would indicate that it was Larkin's, and "P," that Plunkett attended to it. In Mr. Larkin's case, where it is written "mark," it was at Mr. Larkin's request. I heard that request. Where there is no mark, he just said it did not make any difference, he did not care about it, he did not want it marked. I heard him say that occasionally.

Q. You heard Mr. Bransford tell him he would not receive under protest, nor the coupons, except under Coupon-Killer No. 1. Those marks and the refusal of Mr. Bransford to receive were made at the same time. Did you hear that remark from Mr. Larkin to Mr. Bransford about receiving under protest or under Coupon-Killer No. 1?

A. I heard him say that when Mr. Larkin came back the second time. We put these coupons all together. When I started to list them all, our custom was when Larkin or Plunkett wanted coupons sent to court they would let us know, and we would send them up. We just sent them as they wanted them sent, so as to have them in time for trial, and Mr. Larkin sent a list of them in some cases that page 75 he wanted on a certain day. I have not got the list now. I listed the coupons just in accordance with it, and then made out another list of all the others, and brought them all up together, because I wanted to get rid of them. My recollection is that Mr. Larkin gave me a list that he wanted the coupons that day—that is, the day that I brought them up here first, this 1st of May or 11th of May, the day Mr. Cooper was here. I made out that list by Mr. Larkin's list. He said he wanted those brought here right away. I made that list, I think, separate from the others. I took them to the judge, and he would not take them; he said he was not ready to try them, and he would rather I would keep them in the safe at the office. [Plaintiffs demand production of these lists.] The list was made to be brought

up here that day. One of them contained cases that Mr. Larkin said he wanted to try that day, and both were made either the evening before or that day. He told me we were going to have a trial, and I prepared the list to take the judge's receipt for these cases that he would try right away, and I also wrote out a list of the balance that I had, and brought them all up together to give the judge. He told me to take back those they were not going to try, as they would not have use for them that day. That list was made out according to Mr. Larkin's list. [List produced and identified.]

Q. Why did you put anything on here but Mr. Larkin's papers, if that is so?

A. Well, I just wanted to get in everything I could. I wrote out Mr. Larkin's and the others, and I reckon Mr. Plunkett had asked for
page 76 his, and I put his in. I do not know whether he gave me a list or not. He probably asked for his coupons. All of his coupons, I think, he cut from the bonds in the office. Everything that—marked to him I brought up. Those were Larkin's coupon's that had been marked. They are marked on the book, too. I am inclined to think I made out my list by the list Mr. Larkin made out, and not by the book. Of course, I referred to the book to see what the amounts were. He just gave me the names, I think.

Q. Did not you go by the book, and not Mr. Larkin's list, when you made out the separate list?

A. Mr. Larkin gave me a list, and I had to make it correspond with this book. I sent up what Mr. Larkin — and more too. I made two other lists, because Mr. Larkin said he wanted these cases tried right away, and the others the judge would not take, and I did not have room enough, in the first place, and just made a separate and distinct list.

Q. On this list you say here, "Larkin—Writ served." This is a list marked "Larkin—Writ served." Is not that the fact? Is not that a list of the cases in which Mr. Larkin had sued at the time he made that list?

A. Of course he sued on that list. It was not made out because of that fact, but because we understood they were tendered under Coupon-Killer No. 1. They were not made out to conform to the writs particularly. This list is made out on the 11th and the writs were served on the 5th, and this list says that this is a list of Larkin's cases in which writs were served. If he had not sent up a list to send up
page 77 by I should have listed every one, and sent them along, because we understood they were under No. 1. I made up a list and marked it, "Larkin—Writs served," because the writs had been served. I was obliged to make a list and sent it up, because we understood they were tendered that way. There are 60 or 70 cases on the book. You will find they are in exact order that they come on the book. I put them that way, and unless there is some request to pick out any I would do so. I did not want two receipts.

Q. The writs show that they were issued on the 5th and served on

the 7th, and the list shows to have been made on the 11th and marked "Larkin—Writs served." I do not —— who else was there except Mr. Larkin on that morning. The conversation took place while I was at the bank. I may recollect Mr. Margrey being there during the day, but I do not recollect who was there then, because I was at the bank. I know there was something wrong about the coupons, and they were scratched out [witness refers to book, and explains the scratched-out items]. There are a great many places where they are crossed out in the book. I do not know what caused them to be marked out. The controversy commenced in the morning, because he would not receive the coupons and money under protest, and the two transactions of Tanner and Margrey, which are listed here to that effect are scratched out. I have no recollection now, except I know there was something wrong about it. It is in my handwriting. I do not charge my memory with everything that is scratched out. I do not know whether I scratched them out or not. I cannot tell my straight mark from anybody else's. I reckon I was there when Mr. Margrey was there that morning. It is the first thing attended to in this book. There were three or four before Mr. Margrey's. They might have all been in my handwriting, except one. I cannot tell now what caused them to be marked out.

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Q. You are certain of one thing, that when Mr. Bransford put down on this book "Larkin—mark" and "Larkin—not mark" it is in consequence of Mr. Larkin's statement?

A. It was to accommodate him, and Mr. Bransford did not think it was of any sort of importance.

Objected to.

Q. Do you remember saying you made some suggestions as you were going along to the effect that this particular case of holding coupons is under Coupon-Killer No. 1, or coupons received for identification and verification, or money paid under protest?

A. Something of that I used.

Q. Well, if nobody was paying under protest why should you make that suggestion?

A. It has time and again been suggested that that thing should be understood in every particular case, by somebody—I don't recollect who—that said they ought to have it understood in every particular case. Mr. Bransford never thought it was enough. I said it occasionally that way. I never heard anybody say anything about protest. I did suggest that they were not paid under protest.

Re-Direct Resumed.

These two receipts were brought up at the same time. One he refused to take.

Q. You made out this list to correspond with the list that was given to you by Mr. Larkin, who requested you to have coupons in court on a certain date. After you made out this list, which was the remainder

page 79 } of the cases that you then had on hand, and brought them up, in making out this list did you have any reference to the distinction that has been attempted to be made by these gentlemen between this case that we are sued on and the other cases that were tried at that term of court?

A. Nothing in the world. There is the heading, and that is the same exactly. Those notes were made for our guidance, to show what particular cases we had and to keep our memory refreshed. When he wanted cases tried he notified us and we brought them up, and, although he did not notify us to bring up all we had, we did so to get them off our hands.

Q. The reason that these cases are selected from the others, which are punched, is because he called for those specific cases to try that day?

Witness explained that the "X" mark on the book showed that everything had been entered up to that mark on the other book. The amount marked out was to indicate that it was not completed on account of something wrong. I suppose those names appear here [book]. They are not marked out there, because the transaction was completed; and what reason we had for marking those out, except the transaction was finished, I don't know. If a party applied for a license and his arrangement was not effected, and came back two or three days afterwards, we marked it out, and when he did — come no mark was put there. In each case here where there is an "X" mark the party had perfected his arrangement. These entries were made at the time the transaction was perfected.

page 80 } Q. Mr. Nowlin, the postscript says, "Parties have commenced this A. M. to tender coupons and money under protest, which I refused, and they will not leave the coupons to be presented in court by me. Am I right? Larkin claims that under the new law he can pay under protest, but I have not received the new act." I want you to state whether that was written to the Auditor before these transactions commenced, and after the first conversation there in the morning?

A. That is my recollection—that it was before any of these transactions were marked as coupons by Mr. Larkin. That letter was written between 9 and 10 in the morning, and these transactions commenced between 10 and 11, or somewhere along there. The telegram is dated 1:25; that is when it started. My recollection is that there were some transactions before that telegram came. He just went on his own hook, and when the telegram —— disregarded it altogether.

Q. Are you prepared to say whether you all had any hesitation as to how you should act after he had conferred with me?

A. His mind was fully made up about it; he stuck to that determination.

Re-Cross-Examined.

This is the third time I have been examined in court.

Q. Is this the first time that you ever said that you had any of these transactions until after the telegram was received from Richmond?

A. I do not know whether I was asked that or not.

Q. Is not this the first time that you have said it?

page 81 A. That the transactions I had before the telegram was received, I do not know. I do not say either way. My recollection now is that there were transactions had before the telegram was received. I do not recollect saying that here before this.

R. T. Lacy.

My office adjoins Mr. Bransford's. There is a door between us, which is kept open all the time. I am the city treasurer. I was in Mr. Bransford's office repeatedly during the day of the 30th of April, 1888. Mr. Larkin was in there talking with Mr. Bransford, and we got out of Mr. Bransford's office into my office, and he took a seat right across the desk from me, and asked me the question if I would not receive money under protest. I told him, "Oh, yes; tax-payers paid under protest," and I went in there and remonstrated with Mr. Bransford for not taking under protest, and that I took thousands and thousands of dollars under protest. He followed me back where Mr. Larkin sat, and said he would not receive money under protest or coupons under protest; he remarked that he had been caught in that snap the year before by taking money. That conversation was in the morning about 9 or 10 o'clock. I was in his office frequently during the day when Mr. Larkin was paying his licenses, and never heard any controversy after that.

By the Court: Did you hear anything about paying under Coupon-Killer No. 1 or under protest?

A. I have stated what occurred in reference to this matter here. There was no one in Mr. Bransford's office, and Mr. Larkin sat in my

page 82 office, and he distinctly stated that he would not receive. [Objected to.] During the day I was frequently in Mr. Bransford's office, and I never heard any one offering "under protest" anything at all. I did not hear any controversies at all either way.

Q. Did you hear Mr. Bransford after that make any declaration in the presence of Mr. Larkin as to how he was receiving these coupons?

A. I frequently heard him say he would take them under Coupon-Killer No. 1; I did not know Mr. —— was there. I did not hear him make any objection. I remember Mr. Margrey being there; he made no objection. I cannot say whether Larkin was in the room or on the porch. He was there all morning. The envelopes used were something like this. I did not see "under protest" on any of them. If "under protest" had been on all of them I don't think it would have escaped my attention. I had them in my hand. Mr. Larkin had them, and I was sitting to his left. He was standing by there and he had them with their face down. Those I looked at did not have "under protest"

on them. I did not examine them all. I did not notice any of them "with bond." I just looked at the top.

Cross-Examined.

I looked at half a dozen, but whether it was that batch or not I do not know. It was the 30th of April. I do not remember any marks at all under the figures. I was not noticing them for anything at all. I was looking at the man's name. As he paid them I very frequently picked one up and looked at it I had no personal or official interest in them whatever. I am certain they did not have "under protest" or "with bond" on them; no writing under the figures at all. I will not say "with bond," but remember distinctly they did not have "under protest." I cannot say whether they had "with bond" or not, for the reason that if they had "under protest" my attention would have been attracted by Mr. Bransford declaring he would not take them under protest. I did not hear of Mr. Bransford's sending a telegram until afterwards. I did not hear why he had sent it. I did not hear whether he had written to Richmond. I had heard about his going to Mr. Burroughs for instructions. During his absence I asked where he was, and was told he had gone to Mr. Burroughs' office. I did not know he had any difficulty about his duty in the premises. He expressed himself before me very clearly in the matter. Mr. Margrey was in the room when the expression was made; he is an Italian, and not very likely to understand what "under protest" meant, or "with bond" meant. I was not in the office when Bigbee was there, and what took place between them I do not know. I saw Mr. Callan there, but don't know what took place between them. I did not see Mr. Tom Larkin there, and don't know what took place between him and Mr. Bransford. I did not see Miller Ferguson. I saw R. A. Langley, but don't know what took place between them. I saw Mr. Plunkett there, but do not remember what took place. I remember Mr. Margrey; he is the only man I remember. I remember Mr. Keagy. Mr. Larkin was in the office, and Mr. Keagy was on the porch with Mr. Margrey. Several others were there at that time. Mr. Phealey, I remember, a young Irishman; he was out on the porch. I was in the office. I don't remember Mr. Cheatham. I recollect the conversation between Mr. Bransford and Mr. Larkin about the mandamus. I don't know whether it was that day or not. I thought it was a jocular remark of Mr. Larkin's that he would get a mandamus, and I think the reply was, "I wish you would;" but I cannot recollect that it was the 30th of April. I remember a remark of Mr. Larkin's that if Mr. Bransford would not issue that license and take the money under protest he would take a mandamus.

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Q. Do you know of any other controversy after that between the parties in which that sort of expression could have been imported?

A. Mr. Larkin was there so often during the next four or five days, and they were generally quarreling while he was there.

Q. Are you not so close, and see so much of him, that you are apt to get your information and opinions from Mr. Bransford?

A. No, sir; I did not get my opinions from either one of them. I only state what I hear. Frequently these parties came in to pay me licenses, and I have to wait on them, but generally they did not pay me until after the meeting of the court, and time was not much occupied. I did not see the "under protest" on the envelopes. If that was the envelope that I saw, it did not have "under protest" on it. The handwriting does not look like that as it was at that time. I only looked at half a dozen. I picked up the envelope and examined who paid the coupons and the figures underneath.

Q. If Mr. Plunkett, Mr. Thomas Larkin, Mr. W. W. Larkin, and one or two other witnesses who have testified, would swear here in open court that these envelopes, in their present condition, with the words

page 85 } "under protest" on them, were in the condition in which they were before they were carried to Mr. Bransford's office, and when received at Bransford's office, would you believe them?

Objected to and ruled out by the court.

Q. Do you mean to say positively that it was not on there, or that you do not remember it?

A. I will say positively that it was not on any envelope that I examined. It would have attracted my attention after the controversy that I had heard in my own office between Bransford and Larkin.

Q. In that controversy between Larkin and his party and Mr. Bransford, did you perceive any signs of yielding on the part of Mr. Larkin?

A. I did not see any yielding by either party in my office when they went out.

Q. Did not Larkin and the whole party go away because Mr. Bransford would not do the thing in his way?

A. I do not think the whole party went away. Some of them remained on the porch until 12 or 1 o'clock, until another large party of them got back, and in that one I remember Margrey, and, I think, Mr. Burns; I am not positive. I think Mr. Tanner was there, and went away. Some went away, and some didn't. Some stayed until 12 or 1 o'clock, until they got through paying their licenses. There was a big crowd nearly all that day. I never heard of the telegram sent to the Auditor. I knew Mr. Bransford was absent, and asked the question where he was, and was told that he had gone to Mr. *Bransford's*.

page 86 } Re-Examined.

I heard Mr. Bransford frequently say that he would not receive coupons. There were quite a number there. I just remember Mr. Margrey. That was not a busy day with me. I was not receiving license taxes. About one out of ten would come in and pay before getting licenses. The majority of liquor men did not pay me until the court granted the license. I noticed Mr. Bransford and Mr. Nowlin put the

coupons in envelopes when they received them. It was done as the coupons were handed to them by Mr. Larkin. My opinion is that Mr. Larkin handled the coupons entirely; he took them out of the envelopes. The envelopes were within eighteen inches of Mr. Larkin.

page 87 } Plaintiff's Witnesses Recalled.

Thomas Larkin.

Q. Did you see the telegram produced on the last trial here that was admitted by the counsel on both sides to be the telegram received by Mr. Bransford?

A. I saw it several times and read it several times. I made a copy of it. That is the copy [produced] that I made and certified to at the time.

Q. Did Mr. Nowlin take any of these envelopes in his hands?

A. No, sir; Mr. Nowlin did not take any of these envelopes in his hands. Mr. Nowlin was very busy most of the time at the desk some distance from Mr. Bransford, and Mr. Nowlin had not a chance to see or handle them without he made a special effort to do so. I suppose he was as far as from one post to the other from Mr. Bransford [about 15 or 16 feet]. I saw Mr. Lacy once or twice, but he did not seem to be taking any interest in anything. Mr. Lacy never saw the envelopes that I had and no one saw them but Mr. Bransford. When I went down I carried the envelopes generally myself and handed them to Mr. Bransford. The desk is narrow, and broadens out. I sat as far from Mr. Bransford as I am now from Mr. Burroughs [about 5]. He took the envelope in every case, and took memoranda to see that they corresponded with his memoranda. I could not read that envelope to recognize any letter on it. I could not possibly have done it. I had no desire or object in doing so, and could not have seen it without making a special effort, and then would have to read it upside down. That is my handwriting at the top. I generally counted the coupons and made a memorandum. I then handed them over the desk to my brother,

page 88 } and he counted them, and then wrote whatever he wanted on the back, "under protest" or "with bond." He did that himself in nearly every instance. That was done before I left the office without hardly an exeception. I know distinctly that a Mr. Ferguson went in with me. He had the currency in his pocket. Said I: "Mr. Bransford, Mr. Ferguson wishes to get his license and pay for it, and tenders coupons for it." Mr. Bransford said, "I cannot take them." I said, "We will pay the money under protest, and deposit the coupons in accordance with the understanding between you and William," and took the money out of Mr. Ferguson's hands, and he counted it. I do not see how there could be any misunderstanding between us. I went there and tendered coupons in cases in which I had the bonds, and proceeded to have them verified according to law. I do not know that I ever got a receipt at all from the treasurer stating

the transaction. Cannot say positively about that; but I made this distinction with Mr. Bransford, that these coupons were to be sent to court. We had the bonds to prove them. I then took the envelope back that Mr. Bransford handed me; he verified it, and took them from the top of my envelope, which I carried back.

Cross-Examined.

Q. Mr. Larkin, as a matter of fact, is not Mr. Bransford's desk about the width of this bar?

A. It is either wider or higher, but there is a place right here where there is a gate or something, and Mr. Bransford is generally in the position that you are from me when I transacted my business. I did not notice particularly, but I know it was a little further from me, and

page 89 } Mr. Nowlin stood at the window near the desk. I could have walked down towards him. I am not familiar with that envelope.

Q. As a matter of fact, did not Mr. Nowlin and Mr. Bransford come backwards and forwards between one another?

A. Mr. Nowlin sometimes went to the safe and stood on that side, and if Mr. Nowlin had tried he could have seen those envelopes.

Q. Is not the enclosure where Mr. Nowlin and Mr. Bransford stand very small?

A. Yes, sir; about five feet.

W. W. Larkin, Recalled for Plaintiffs.

Q. I call your attention to the statement of Mr. Nowlin. You remember what he said about Mr. Bransford using the word "verification"; what have you to say to that?

A. I do not want to give testimony that is not proper and relevant, but the statement made by Mr. Nowlin as to what Mr. Bransford said about taking for identification and verification is absolutely untrue. There is no foundation in the world for it. I never heard Mr. Bransford make use of that expression until I heard it upon his attendance in this court. That is a technical term. We used Coupon-Killer No. 1. I never heard Mr. Bransford use the expression before. That is not true, and there is no ground for Mr. Nowlin's statement in reference to the matter.

Q. Mr. Nowlin said that there is no uniform rule about giving a receipt where the money was paid and the coupons tendered for the purpose of being brought here for the purpose of identification and verification?

page 90 } A. I say that Mr. Bransford, of his own motion, on every occasion whenever I tendered coupons for identification or verification or under Coupon-Killer No. 1, as a matter of form, and of his own motion, invariably gave me a receipt, and the preceding year, 1887, he gave a receipt always for the money paid under protest, and it was not until the spring (30th of April) that he ever

refused to give a receipt for payments paid under protest. That was the only controversy between us.

Q. When you went away that day when your first effort had failed, was there any understanding between you and Mr. Bransford that he would consult with somebody about what he had done, and that you were to go back again?

A. Mr. Bransford said that he wanted time to consult counsel and ascertain what he ought to do in the condition of things, and that he would let me know. I went back again once or twice, and Mr. Bransford had not received the information that he was looking for, and one or two occasions I did not find him at the office. He was absent, and he seemed to be waiting for something. I did not know that he had sent a telegram to Richmond, but I had some suspicion of it. I do not know how I got an inkling of that. I waited and went there several times, and Mr. Lacy was there during that time. I went into his office, as he states, and I wanted him to bring his influence to bear upon Mr. Bransford that he ought not to refuse money under protest, because every man had a right to pay money under protest where be believed it was being improperly exacted of him, and he went and told Mr. Bransford, in my presence, that he would receive, and always did, when a man proposed to pay it under protest, but Mr. Bransford adhered to his determination that he would not receive money under protest, for the reason that I had sued him before. I remember distinctly telling him that there was not a civilized nation on the globe that would sustain an officer in demanding of a man money and refuse to allow him to pay it under protest if he was wrong. I came back once or twice, I cannot tell you how many times—my memory is very poor to judge of the length of time without I take notice particularly—to consult Mr. Bransford, to see if he had changed his mind. I told him I would get a mandamus in this case, but it was not a jocular remark. I tried to say everything pleasantly, but I did tell him that I would get a separate mandamus in each one of these cases, and I went out and went over town to find Judge Latham, and when I approached him I stated that I had a large number of these cases, and did not want to take the trouble unless he would give me an answer whether it was a proper remedy in his judgment, and he said it was.

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Q. When during the day it was communicated to you, and how was it indicated to you, that Mr. Bransford had changed his purpose in regard to this thing?

A. I could not tell. I remember that we had to send out and let these people know. We sent for Mr. Tanner and Mr. Margrey, and it occupied a considerable length of time.

Q. How did he indicate it to you? What did he say to you when he finally concluded to do this?

A. He said, "I have made up my mind or have concluded to receive the money under protest, provided you will deposit with me the coupons."

page 92 Q. And when he required you to deposit the coupons you say that you objected to it, and told him he had no right in law to require you under this proceeding to deposit coupons with him?

A. I discussed the matter with him, I think, for at least twenty minutes, and I told him it was simply arbitrary on his part. He required it to be done as a preliminary to taking the money under protest, and I agreed then that I would accept his proposition and deposit the coupons with him, and for the balance of the day we never said coupons, identification, or anything else, except I told him for his guidance in these matters where I paid him for identification and wanted them sent to court, or when I paid under protest, and made for my own guidance a list. These protest cases I kept on the big ledger, and the cases with bonds in a little book.

Q. Mr. Nowlin says you made out a list of cases that you sent up here?

A. I have no recollection of ever doing anything more in the matter than to ask them to keep them separately, and send them up here as early as possible in the identification cases. I wanted to push them through as soon as I could and get the money for them.

Q. When you first came here, did you find any coupons which had been tendered and money paid under protest?

A. No, sir; I never found a single case here. The coupons were brought up in my presence some time in June; I think about the 5th or 6th; not later than that. I was here at that time. One page 93 of these receipts is dated the 6th of June, and it was then I protested against it. I had not heard up to that time that these coupons had been brought up to court. I knew nothing about it, and it was a great surprise to me to see them laid on the counter for the judge. I entered my protest then against the matter. As to the statements of Mr. Lacy, everything he has said is, in my mind, correct in the main. He saw a number of interviews between Mr. Bransford and myself, in which Bransford positively refused and stubbornly adhered to his determination not to take money under protest, but later in the day these parties were sent for, and we gathered there in a considerable crowd, and after our understanding once took place we did not jar on it any more. I just gave him those envelopes, which he took memoranda from in every case. Mr. Bransford had the paper in his hand just as it is now, with the exception of some little pencil-mark that some one has put on now, and they have not been altered one jot or tittle since that time. Mr. Lacy said that this upper part was in one handwriting and the protest in another. The upper part was written by Mr. Thomas Larkin and the lower part by me. I put the "under protest" or "bonds" according to the meaning. I exercised my discretion in the matter, and he did not know whether I preferred to pay with bonds or under protest, and when he fixed it up and passed them to me, then I wrote it whether I chose to take one or the other. I do not care to have two parties do that work when I could avoid it. I

never gave anybody an opportunity; never scattered them round in the numbers that Lacy talked about. When I took the envelopes I generally did it and took the coupons out or let Mr. Bransford, and put one on the top of the other one under protest, and hand them to Mr. Bransford, and Mr. Lacy might have been present, but I do not remember seeing him during the balance of the day. I handled the coupons just as if they had been $221.75. I did not scatter them round. I gathered them carefully, so I would not lose them, as I regarded them as something, because I might have carried the coupons loosely in my pocket, but I proceeded with the utmost particularity with them.

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Q. Mr. Nowlin says that he understood you had changed your mind, and not that Mr. Bransford had changed his mind, and that when you came back there, and commenced paying these taxes according to his demand, and not according to your demand. State whether you ever changed your purpose or your plan at all.

A. I had not the slightest idea of it, sir. There was no occasion for me to change my plan if he had continued to require it. I would not have done it, and I appealed to the men present to stand by me and my directions, and I would compel Mr. Bransford to do just what he said he would not do, and told them not to go away, and be firm in paying their demands under protest. My program was to make these payments conform to the decision of the Supreme Court of the United States in the case of Royall vs. The Commonwealth.

Q. Mr. Bransford's letter says that "Larkin claims that under the new law he can pay under protest, but I have not received the new act."

A. I could have no other reference except to the decisions of the Supreme Court. There was no law of the Legislature on which I was relying, but it was on this decision as affecting these things made by the Supreme Court of the United States. There was no act of the Legislature at that time. The law that I was relying on was the decision of the Supreme Court of the United States.

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The envelopes referred to in the foregoing evidence are endorsed as follows—to-wit:

page 96

(1)

F. J. Magri.

License of 1888. April 30.

6x30	180		Under protest.	
1	15			
3x3	9		5 00	1 80
1	150		5 00	15
	——	$205 00	132 50	9
			62 50	——
			——	204
	June 6.		205 00	

(2)

J. D. Tanner.

License of 1888.

7x30 $2 10

Under protest.

June 6.

(3)

Jas. M. Fealy.

License of 1888, April 30, 1888.

6x30	180	$205 00		
1	15			
3x3	9	Under protest.		
1	1 50			
	——		6	180
	205 50		3	9
			1	15
			1	1 50
	June 6.			205 50

(4)

R. H. Carter.

License 1888.

8x30		240	$253 75
4x3	7 50		
1	6 00		
	——	13 50	
		——	
		253 50	Under protest.
	June 6.		

(5)

John Helbig.

License of 1888.

$162 00

Under protest.

June 6.

(6)

Bigbie Bros. & Co.

License of 1888.

$412 50

Under protest.

June 6.

(7)

Pat Callan. $221 75

7x30	210	
1	7 50	
1	3 00	
1	1 50	
	222 00	D. $3.

Under protest.

June 6.

(8)

John Wall.

License of 1888.

Coupons,

4x30		120	
1	7 50		
1	3 00		
		10 50	Under protest.
		$130 50	

June 6.

(9)

Jas. H. Gregory. $187 50

6x30	180	
1	7 50	
	187 50	

Under protest.

June 6.

(10)

J. F. Jackson.

4	30	120
1	15	15
1	7 50	7 50
1	3 00	3 00
		$145 50

Under protest.

June 6.

(11)

E. A. Langley.

License, 1888.

4	30	120
1	15	15
1		3
		$138

Under protest.

June 6.

(12)

Geo. W. Novell.

License, 1888. $137 50

4	30	120
1		15
1		3
		138

Under protest.

June 6.

(13)

C. H. Parsons. $139 50

4	30	120
1		15
1		3
		138

Under protest.

June 6.

(14)

R. S. Terry.

12	30	360
1		15
1		3
Cash,		1 50
		$379 50

Under protest.

	75 60
	304 40
	2 25 fees.
	382 25

June 6.

(15)

Esthill Johnson. $205

License of 1888. April 30, '88.

Under protest.

June 6.

(16)

Guggenheimer & Co. 474 00

15	30	450
1		15
1		7 50
1		1 50
		477 00

Under protest.

June 6.

(17)

Robinson, Tate & Co.

License 1888. 30 April.

8	30	240	
2	3	6	
1		7 50	Under protest.
1		1 50	
		253 50	

Cost 50. June 6.

(18)

Lee & Co.

April 30, 1888. License.

8	30	240	
1		7 50	
		$247 50	

Cost 50. Under protest.

June 6.

(19)

J. J. Harley.

April 30, 1888. $140 00

4	30	120	
1	15	15	
1	3	3	
		1 50	
		$139 50	

Money 50. Under protest.

June 6.

(20)

Matt Byrne.

License 1888.

7	30	$210 00	

Under protest.

June 6.

(21)

John Manning. 205 00

License 1888.

1		30	
11	15	165	Under protest.
3	3	9	
		204	
1		1 50	
		205 50	

June 6.

(22)

Thos. A. Manning.

3	30	90	
8	15	120	
			210

License 1888.

Under protest.

June 6.

(23)

Pat Martin.

7	30	210

License 1888. Ap'l 30, '88.

Under protest.

June 6.

(24)

D. P. Morrison.

2x30	60	
10x15	150	
		$210

1888, License.

Under protest.

June 6.

(25)

J. P. Mallan.

License 1888.

6	30	180	
1		15	195 00
		195	

Under protest.

June 6.

(26)

J. J. Mallan & Bro.

License 1888. 147 50

4	30	120	
1	15	15	
4	3	12	
		$147 00	

Cash 50.

Under protest.

June 6.

(27)

J. B. Cheatham. 1888.

3	30	90	$137 50
3	15	45	
1		3	
		138 00	

Under protest.

June 6.

(28)

Lewis E. Smith.

Lieense 1888. $137 50

9	15	135
1		3
		138 00
9x15	135	
1x3	3	

Under protest.

June 6.

(29)

L. Lazarus.

License 1888. April 30.

$237 50

Tend. 8 30 $240

Under protest.

June 6.

(30)

Thos. O'Brien.

7	30	210
1		1 50
		211 50

P'd under protest.

{No. 31 omitted. W. H. F.}

June 6.

(32–33)

W. P. Roberts & Bro.

W. P. R. & J. J. R.	$15 00 9 00	15 00 10 50
J. J. R. & W. P. R.	24 00 1 50	May 1st, 1888.

P'd under protest.

June 6, and May 11.

(34)

J. J. Reynolds & Co.

License 1888.

11	15	165	
1	3	3	
1	1 50	1 50	
		169 50	May 1, '88.

Cash under protest.

June 6.

(35)

Frank McCarron.

6	30	180
1		15
3	3	9
		1 50
		205 50

May 1, 1888.

205

Under protest.

June 6.

(36)

M. Kegney. May 1st, 1888.

License. 205

6	30	180
1		15
3	3	9
1		1 50
		205 50

Under protest

June 6.

(37)

B. Cantieri & Co.

May 1, 1888.

6 Coup. $30 $180 00

Under protest.

June 6.

(38)

B. Cantieri. $220

7	30	210
3	3	9
1		1 50
		220 50

Under protest.

June 6.

(39)

A. W. Butler.

License 1888.

3	30	90	
3	3	9	
1	1 50	1 50	
			$100 50 May 1, 1888.

Under protest.

June 6.

(40)

Bauhan & Sheffey. $38 30

Coup. $39.

May 1, '88.

Under protest.

June 6.

(41) $142 50

M. McCarron. May 1, 1888.

4	30	120	
1		15	
2	3	6	
1		1 50	
		$142 50	Under protest.

June 6.

W. J. Ervin. License tax, $100.

3	30	90	
3	3	9	
		$99	

Under protest.

This is the envelope referred to by C. T. Plunkett in his evidence in the case of Callan vs. Bransford, taken by me.

J. N. WHITTAKER,
Stenographer Corp. Court, L'b'g.

J. W. Breathed.

License 1888.

1 Coup. $30.

Under protest.

June 6.

(43)

Thos. J. Smith, Jr. License 1888.

9	30	270 00		
3	1 50	4 50		275 00
		274 50		
7	30	210		Under protest.
4	15	60		
1		3		May 1, '88.
		1 50		
		274 50	Cash 50.	June 6.

(48)

Mrs. W. S. Jones. 1888.

License $30.

2 15 $30 00

Under protest.

June 6.

(49)

Daniel Collins.

Coupons. June, 1888.

4	30	120	
1	15	15	
2	3	6	
1		1 50	Under protest.
		$142 50	

June 6.

(50)

E. E. Gills, 1888.
Jno. W. Anderson, License,
Gills & A. $34 00

1 Coup.	30	
1	3	
1	1 50	
	34 50	

Under protest.

June 6.

(51) 1888, License.

Lucado & Sons. $289 00

L. F. L.	9	3	270
G. F. L.	1		15
A. W. L.	1		3
	1		1 50
			$289 50

Under protest.

June 6.

(52)

R. Fazzi. 1888. License, $215.

7	30	210
1		3
1		1 50
		214 50

Cash 50. Under protest.

June 6.

(1)

Jno. W. Perkins. $142 50

P'd with bonds.

C. May 11.

[Page 100.]

(2)

Gilliam & Co. License 1888.

10	30	300	
3	3	9	
			311 00
		309	

May 1, '88.

With bonds.

C. May 11.

(3)

Z. A. Langley & Co.

4	30	120	
		15	
		1 50	
		136 50	

May 1, '88.

With bonds.

C. May 11.

(4)

J. W. Curle, ag't W. E. Brown.

4 Coup.	30	120	
1 "		15	
4 "	1 50	6 00	
		141 00	

With bonds.

May 11.

(5)

Wm. H. Ford.

License 1888.

7 Coup.	$30	$210

With b'ds.

C. May 11.

(6)

K. D. Urquhart & Co

May 1, 1888.

1 Coup.		30
4	15	60
3	3	9
		99 00

Cash 1.00. With bonds.

C. May 11.

(7)

J. M. Williams & Co.

Coupons. License 1888.

6	30	$180
4	1 50	6
		$186 00

With bonds.

May 11.

(8)

Mrs. M. J. Frehey. 1888.

4	30	120
1		15
1		1 50
		$136 50

With bonds.

May 11. May 2, '88.

(9)

Robt. Jackson. 1888.

May 2. License.

4	30	120
1	15	15
1		1 50
		$136 50

With bonds.

May 11.

(11)

Wm. Kinnier. 1888.

License, $162 00.

5	30	150
1	7½	7 50
3	1½	4 50
		162 00

With bonds.

May 11.

(12)

Gibbs & Hancock.

License $189.

6	30	180
1		7 50
1		1 50
		$189 00

With bonds.

May 11.

(13)

Ed. L. Norvell.

License 1888.

3	30	90	$100
6	1 50	9	
		99	

Cash 1.00, tend. With bonds.

May 11.

(14)

P. G. Cosby & Co.,

as P. G. C. License 1888.

3	30	90
6	1 50	9
		99 00

With bonds.

May 11.

(14½)

T B. Ferguson,
T. Lyons Hutter, } as Ferguson & Hutter.

3	30	$90
2	1 50	3
		93 00

License, $94 00

With bonds.

May 11.

(15)

Anheuser-Busch Brewing Asso.

License, $150 00.

5	30	$150 00

With bonds.

May 11.

(16)

J. W. West, as J. W. West & Co.

License, $90 10.

C'k for		$90 85
3	30	$90

Cash $60.10.

With bonds.

May 11.

(17) 137 50

Walter Henry.

License 1888.

4	30	120
1		15
1		1 50
		136 50

With bonds.
Mark and send to Ct.

May 11.

(18)

Scott & Noble. License 1888.

3	30	90	$109
1		15	
2	1½	3	
		108 00	

Cash $1.00 With bonds.

May 11. Pl.

(19)

Martin, Gannaway & Co.,
Martin & Gannaway.

License 1888. $134

4	30	120	
9	1½	13 50	
		133 50	With bonds.

50 cash. Pl.

May 11.

(20)

Peak & Graves.

2 Coup.		30	60
1 "			15
2 "		1½	3
			$78

Pl.

Proved in May. See Order Book.

May 11.

(21)

Jos. L. Lee. 1888. $39.

1 Coup.		$30
6	1½	9
		39 00

With bonds.

May 11 Pl.

(22) License, 79 00.

C. H. Almond.

License 1888.

2	30	60
1	15	15
2	1 50	3 00
		78 00

Bonds att.

May 11.

(23)

M. Stuart, Jr., } as Smith, S. & Co.
W. O. Smith, }

License 1888. $124

4	30	120 00
2	1½	3 00
		123 00

Cash 1.00. With bonds.

May 11.

(24)

C. S. Hutter.

1	30
1	15
	45

Cash 1.00.

With bonds.
Mark and send to Ct.

May 11.

A. A. Tunstall, atto.

License 1888. $15 00

1 Coup.	$15 00	
1 " Person'l,	15 00	(14 36)

Under protest.

June 6, and May 11.

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Mallan Bros. — 1888, License.

1	7 50	$10 00
1	3	
	10 50	

Under protest.

May 11.

R. T. A., and J. H. C.,

Aunspaugh & Cobbs.

5	30	150 00	
1	15	15 00	
1	7 50	7 50	
4	1 50	6 00	
		178 50	With bonds.

May 11.

N. H. Lavender.

2	30	$60 00	
1		15 00	
4	1½	6 00	
		$81 00	With bonds.

May 11.

The extract from the treasurer's book of "Licenses for 1888," "Letter to Auditor," copy of "Telegram from Auditor," receipts of judge of Corporation Court for coupons, and list of cases in which coupons are tendered and money paid under protest, licenses cases 1888, referred to in the foregoing evidence, are in the words and figures following—to-wit:

1st.

License 1 May, '88, to 1 Nov., '88.

1888.				
Ap'l 30.	Bigbie Bros. & Co.,	Wholesale Liq'r,	350 00	
		do. with Retail,	62 50	
	L. Coupons,	2 Fees,	1 50	
				414 00
	Jas. M. Fealey,	Bar-room,	132 50	
	L. Coupons,	Retail with Bar,	62 50	
		Merchant,	5 00	
		Tob. and Cig.,	5 00	
		4 Fees,	3 00	
				208 00
	Pat Callan,	Bar-room,	152 00	
	L. Coupons,	Retail with Bar,	62 50	
		Tob. and Cig.,	5 00	
		3 Fees,	2 25	
				221 75

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	John Wall,	Retail Liquor,	125 00	
	L. Coupons,	Merchant,	5 00	
		2 Fees,	1 50	
				131 50
	L. Lazarus,	Bar-room,	170 00	
	L. Coupons,	Retail with Bar,	62 50	
		Tobo. and Cig.,	5 00	
		3 Fees,	2 25	
				239 75
	Jno. D. Tanner,	Bar-room,	132 50	
	L. Coupons,	Retail with Bar,	62 50	
		Merchant,	10 00	
		Tobo. and Cig.,	5 00	
			$210 00	
		4 Fees,	3 00	
				213 00

	Jas. H. Gregory,	Bar-room,	132 50	
	L. Coupons,	Billiards,	50 00	
		Tob. and Cig.,	5 00	
		3 Fees,	2 25	
				189 75
	F. Magri,	Bar-room,	132 50	
	L. Coupons,	Retail with Bar,	62 50	
		Merchant,	5 00	
		Tob. and Cig.,	5 00	
			$205 00	
		4 Fees,	3 00	
				208 00
Ap'l 30.	E. Johnson,	Bar-room,	132 50	
	L. Coupons,	Retail with Bar,	62 50	
		Merchant,	5 00	
		Tob. and Cig.,	5 00	
			$205 00	
		4 Fees,	3 00	
				208 00

[Page 104.]

	John Helbig,	Ordinary,	157 00	
	L. Coupons,	Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				163 50
	R. H. Carter,	Bar-room,	136 25	
	L. Coupons,	Retail with Bar,	62 50	
		Billiards,	50 00	
		Tob. and Cig.,	5 00	
			$253 75	
		4 Fees,	3 00	
				256 75
	Guggenheimer & Co.,	Merchants,	474 00	
	L. Coupons,	Fee,	75	
				474 75
	C. H. Parsons,	Ret. Tob. and Cig.,	5 00	
	L. Coupons,	Bar-room,	132 50	
		2 Fees,	1 50	
				139 00

John W. Jackson,	Ret. Tob. and Cig.,	5 00	
L. Coupons,	Bar-room,	140 00	
	2 Fees,	1 50	
			146 50
J. B. Cheatham,	Bar-room,	132 50	
L. Coupons,	Tob. and Cig.,	5 00	
	2 Fees,	1 50	
			139 00
L. E. Smith,	Bar-room,	132 50	
L. Coupons,	Tob. and Cig.,	5 00	
		$137 50	
	2 Fees,	1 50	
			139 00

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R. S. Terry,	Ordinary,	275 00	
L. Coupons,	3 Billiards,	100 00	
	Tob. and Cig.,	5 00	
		$380 00	
	3 Fees,	2 25	
			382 25
John Manning,	Bar-room,	132 50	
L.,	Retail with Bar,	62 50	
	Merchants,	5 00	
	Tob. and Cig.,	5 00	
		$205 00	
	4 Fees,	3 00	
			208 00
Matt. Byrne,	Bar-room,	132 50	
L.,	Retail with Bar,	62 50	
	Merchants,	10 00	
	Tob. and Cig.,	5 00	
		$210 00	
	4 Fees,	3 00	
			213 00
Robinson, Tate & Co.,	Merchants,	204 00	
L.,	Com. Merchants,	50 00	
	2 Fees,	1 50	
			255 50

	D. P. Morrison, L.,	Bar-room,	132 50	
		Retail with Bar,	62 50	
		Merchants,	10 00	
		Tob. and Cig.,	5 00	
			$210 00	
		4 Fees,	3 00	
				213 00
Ap'l 30.	T. A. Manning, L.,	Bar-room,	132 50	
		Retail with Bar,	62 50	
		Merchants,	10 00	
		Tob. and Cig.,	5 00	
			$210 00	
		4 Fees,	3 00	
				213 00
	P. Martin, L.,	Bar-room,	132 50	
		Retail with Bar,	62 50	
		Merchants,	10 00	
		Tob. and Cig.,	5 00	
			$210 00	
		4 Fees,	3 00	
				213 00

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	J. J. Harley, L.,	Retail Liquor,	125 00	
		Merchants,	10 00	
		Tob. and Cig.,	5 00	
			$140 00	
		3 Fees,	2 25	
				142 25
	Lee & Co., L.,	Merchants,	188 00	
		Com. Merchants,	60 00	
		2 Fees,	1 50	
				249 50
	J. J. Mallan & Bro., L.,	Bar-room,	132 50	
		Merchants,	10 00	
		Tob. and Cig.,	5 00	
			$147 50	
		3 Fees,	2 25	
				149 75

	J. P. Mallan,	Bar-room,	132 50	
	L.,	Retail with Bar,	62 50	
			$195 00	
		2 Fees,	1 50	
				196 50
May 1.	Z. A. Langley & Co.,	Bar-room,	132 50	
	L. Mark,	Tobo. and Cig.,	5 00	
		2 Fees,	1 50	
				139 00
	J. W. Curle, agt.,	Bar-room,	136 25	
	L. Mark,	Tobo. and Cig.,	5 00	
			$141 25	
		2 Fees,	1 50	
				142 75
	Thos. Smith, Jr.,	Wholesale Malt,	150 00	
	L.,	Retail Liquor,	125 00	
		2 Fees,	1 50	
				276 50

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	John W. Perkins,	Bar-room,	132 50	
	L. Mark,	Merchant,	5 00	
		Tob. and Cig.,	5 00	
			$142 50	
		3 Fees,	2 25	
				144 75
	A. W. Butler,	Merch. Broker,	100 00	
	L.,	Fee,	75	
				100 75
	Gilliam & Co.,	Merchants,	67 00	
	do.	"	184 00	
	L. Mark,	Comm'n Merch'ts,	60 00	
			$311 00	
		3 Fees,	2 25	
				313 25
	J. J. Reynolds & Co.,	Ordinary,	165 00	
	L.,	Ret. Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				171 50

W. H. Ford, L. Mark,	Bar-room,	132 50	
	Retail with Bar,	62 50	
	Merchant,	10 00	
	Tob. and Cig.,	5 00	
		$210 00	
	4 Fees,	3 00	
			213 00
W. P. Roberts & Bro., L.,	Merchants,	10 00	
	Tob. and Cig.,	5 00	
	2 Fees,	1 50	
			16 50
J. J. Roberts & Bro., L.,	Merchants,	5 00	
	Tob. and Cig.,	5 00	
	2 Fees,	1 50	
			11 50

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Baughan & Sheffey, L.,	Merchants,	38 50	
	Fee,	75	
			39 25
Thomas O'Brien, L.,	Bar-room,	132 50	
	Retail with Bar,	62 50	
	Merchant,	11 50	
	Tob. and Cig.	5 00	
		$211 50	
	4 Fees,	3 00	
			214 50
B. Cantieri & Co., L.,	Bar-room,	140 00	
	Bowling Alley,	35 00	
	Retail Tob. and Cig.,	5 00	
	3 Fees,	2 25	
			182 25
B. Cantieri, L.,	Bar-room,	140 00	
	Eating-house,	25 00	
	Billiard Saloon,	50 00	
	Ret. Tob. & Cig.,	5 00	
	4 Fees,	3 00	
			223 00

	F. McCarron, L.,	Ret. Tob. & C.	5 00	
		Bar-room,	132 50	
		Merchant,	5 00	
		Ret. Liq. Dealer,	62 50	
		4 Licenses,	3 00	
				208 00
	M. McCarron, L.,	Ret. Tob. & C.	5 00	
		Merchant,	5 00	
		Bar-room,	132 50	
		3 Fees,	2 25	
				144 75

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	M. Kegney, L.,	Ret. Liquor,	62 50	
		Merchant,	5 00	
		Ret. T. and C.,	5 00	
		Bar-room,	132 50	
		4 Fees,	3 00	
				208 00
	K. D. Urquhart, L. Mark,	Com'n Broker,	100 00	
		Fee,	75	
				100 75
May 2.	R. Fazzi, L.,	Merchant,	5 00	
		do.	5 00	
		Tob. and Cig.,	5 00	
		do.	5 00	
		Bar-room,	132 50	
		Retail with Bar,	62 50	
		6 Fees,	4 50	
				219 50
	Lucado & Sons, L.,	Merchants,	239 00	
		Comm. Merch'ts,	50 00	
		2 Fees,	1 50	
				290 50
	G. W. Norvell, L.,	Bar-room,	132 50	
		Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				139 00
	Mrs. W. S. Jones, L. Coupons,	Ho., Pri. Eat.,	30 00	
		Fee,	75	
				30 75

	J. M. Williams & Co.,	Merchants,	186 00	
	L. Mark,	Fee,	75	
				186 75

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	W. W. Larkin,	Att'y at Law,	25 00	
	L.,	Fee,	75	
				25 75
	Mary J. Frehey,	Ret. Tob. and Cig.,	5 00	
	L. Mark,	Bar-room,	132 50	
		2 Fees,	1 50	
				139 00
	Daniel Collins,	Bar-room,	132 50	
	L.,	Retail Tob. & Cig.,	5 00	
		Merchant,	5 00	
		3 Fees,	2 25	
				144 75
	Gills & Anderson,	Merchants,	34	
	L.,	Fee,	75	
				34 75
	Rob't Jackson,	Bar-room,	132 50	
	L.,	Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				139 00
May 3.	Wm. Kinnier & Co.,	Merchants,	162 00	
	L. Mark,	Fee,	75	
				162 75
	Gibbs & Hancock,	Merchants,	139 00	
	L. Mark,	Fee,	75	
		Comm'n Merch'ts,	50 00	
		Fee,	75	
				190 50
	W. O. Johnson,	Merchant,	64 00	
	L. Mark,	Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				70 50

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	Ferguson & Hutter,	Merchants,	94 50	
	L. Mark,	Fee,	75	
				94 75
	P. G. Cosby & Co.,	Com. Brokers,	100 00	
	L. Mark,	Fee,	75	
				100 75

	Edw'd L. Norvell,	Broker,	100 00	
	L. Mark,	Fee,	75	
				100 75
May 4.	Anheuser-Bush B. Co.,	Wholesale Malt,	150 00	
	L. Mark,	Fee,	75	
				150 75
	J. W. West & Co.,	Merchants,	90 10	
	L. Mark,	Fee,	75	
				90 85
	A. A. Tunstall,	Att'y at Law,	15 00	
	L.,	Fee,	75	
				15 75
	J. T. Dilliard,	Merchant,	41 50	
	L.,	Fee,	75	
				42 25
May 7.	Walter Henry,	Bar-room,	132 50	
	L., May 7, Mark,	Tobo. and Cig.,	5 00	
		2 Fees,	1 50	
				139 00
May 7.	Peak & Graves,	Merchants,	79 00	
	L. Mark,	Fee,	75	
				79 75
	Martin & Gannaway,	Merchants,	100 00	
	do. do. & Co.,	do.	34 00	
	L. Mark,	2 Fees,	1 50	
				135 50

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	Jos. L. Lee,	Merchant,	34 00	
	L. Mark,	Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				40 50
	Scott & Noble,	Merchants,	109 00	
	L. Mark,	Fee,	75	
				109 75
	C. H. Almond,	Merchant,	79 00	
	L. Mark,	Fee,	75	
				79 75
	J. W. Breathed,	Ag't, rent'g houses,	30 00	
	L. Mark,	Fee,	75	
				30 75

	Mallan Bros., L.,	Merchants, Fee,	10 00 75	
				10 75
	Mary Mallan, L.,	Merchant, Fee,	10 00 75	
				10 75
	Smith, Stuart & Co., L. Mark,	Merchants, Fee,	124 00 75	
				124 75
May 8.	C. S. Hutter, L., May 8, Mark,	Merchant, Fee,	46 00 75	
				46 75
May 10.	D. L. Ward & Co., L., May 10, Mark,	Merchants, Fee,	109 00 75	
				109 75
May 11.	Wm. H. Jones, L. Mark'd,	Com. Broker, Fee,	100 00 75	
				100 75

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May 12.	C. M. Guggenheimer, L. May 12, Mark'd,	Merchant, Fee,	103 00 75	
				103 75
	Davis, Diuguid & Co., L. Marked,	Merchants, Com. Merchants, 2 Fees,	130 00 50 00 1 50	
				181 50
	F. A. Kinckle, L. Mark,	Merchants, Fee,	154 00 75	
				154 75
	Gregory Bros., L.,	Merchants, Fee,	29 50 75	
				30 25
	Karn, Hickson & Co., L.,	Flour, feed, &c., Fee,	34 00 75	
				34 75
	J. W. Edwards, L.,	Daguerrian, Fee,	50 00 75	
				50 75
May 19.	Adams B. & Paynes, L. Mark, May 19,	Merchants, " 2 Fees,	289 00 94 00 1 50	
				384 50

	T. M. McCorkle,	Merchants,	49 00	
	L. Mark, May 19,	Ret. Tob. and Cig.,	5 00	
		2 Fees,	1 50	
				55 50
	B. E. Hughes & Co.,	Merchant,	40 00	
	L. Mark, May 19,	Com. Merchants,	50 00	
		2 Fees,	1 50	
				91 50

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	Mrs. Ann Lawless,	Junk Dealer,	50 00	
	L.,	Merchants,	5 00	
		2 Fees,	1 50	
				56 50
	Dr. J. H. Bagg,	Physician,	10 00	
	L.,	Fee,	75	
				10 75
May 21.	J. H. Franklin & Son,	Merchants,	225 00	
	L., May 22, Mark,	Fee,	75	
				225 75
		Com. Merch't,	50 00	
		Fee,	75	
				50 75
May 22.	W. F. Mathews & Co.,	Merchants,	100 00	
	L., May 22, Mark,	Fee,	75	
				100 75
May 24.	John Kinckle, Jr.,	Att'y at Law,	15 00	
	L.,	Fee,	75	
				15 75
	W. J. Ervin,	Com. Broker,	100 00	
	L.,	Fee,	75	
				100 75
	R. H. Merchant,	Att'y at Law,	15 00	
	L.,	Fee,	75	
				15 75
May 30.	J. D. Hobbie & Co.,	Merchants,	100 00	
	L. Marked,	Fee,	75	
				100 75
	W. D. Branch,	Att'y at Law,	15 00	
	L.,	Fee,	75	
				15 75

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J. D. Sullivan,	Junk Dealer,	50 00	
L. Marked,	Merchants,	5 00	
	Tob. and Cig.,	5 00	
	3 Fees,	2 25	
			62 25

(Omitted in proper place, Ap'l 30th.)

Ap'l 30.	R. A. Langley & Co.,	Ret. Tob. & Cig.,	5 00	
	L. Coupons,	Bar-room,	132 50	
		2 Fees,	1 50	
				139 50

30 April, 8.

Col. Morton Marye,
Aud. Pub. Acc'ts:

Dear Sir,—

Enclosed I hand statement collections for week ending 28 April, 1888—viz.:

Taxes,	1887,	106 10	
License,	1888,	12 00	
			118 10
Cr. to School Fund (taxes),		106 10	
C'k No. 115, P. N. B'k, Cr. License,		12 00	
			118 10

Please send receipt accordingly.

Yours respectfully,

JNO. W. BRANSFORD, Treas.,
By NOWLIN.

P. S.—Parties have commenced this A. M. to tender coupons and money *under protest*, which I refused, and they will not leave the coupons to be presented in court by me. Am I right? Larkin claims that under the new law he can pay under protest, but I have not received the new acts.

J. W. B., Tr.

page 116 } Copy of telegram received by Jno. W. Bransford, in answer to enquiries relative to receiving coupons tendered in payment of State taxes, &c.:

1:25 P. M., April 30, 1888.
Dated Richmond, Va.

To Jno. W. Bransford,
City Treas'r, Lynchburg, Va.:

When money is offered for deposit to pay for a license, the law requires you to receive the money.

AUDITOR.

Lynchburg, 11 May, 1888.

Received of J. W. Bransford, treasurer, the following envelopes, sealed, said to contain the amount in coupons, as listed below:

[Plunkett not marked.]

Smith, Steptoe & Co.,	234 00
Beasley, C. H., & Co.,	219 00
Anderson, J. B., & Co.,	252 00
Dunbar, D.,	169 50
Bryant, A. W.,	199 50
Sherry, Hugh,	204 00
Lichford, L. E.,	210 00
Williams, J. T., Son & Co.,	300 00
Lewis & Jennings,	171 00
Plunkett, C. T.,	300 00
Nowlin, S. W., & Co.,	240 00
Parker, L. C.,	180 00
Shafer & Roberts,	156 00
Bigbie & Thaxton,	180 00
Brown, W. N., & Bro.,	135 00

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[Larkin marked.]

Peak & Graves,	78 00
Henry, Walter,	136 50
West, J. W., & Co.,	90 00
Anheuser-Busch Co.,	150 00
Norvell, Ed. L.,	99 00
Cosby, P. G., & Co.,	99 00
Ferguson & Hutter,	93 00
Johnson, W. O.,	69 00
Gibbs & Hancock,	189 00
Kinnier, Wm., & Co.,	162 00
Jackson Ro.,	136 50
Frehey, M. J.,	136 50
Williams, J. M., & Co.,	186 00
Urquhart, K. D.,	99 00
Over,	$4,873 50

	$4,873 50

[Larkin marked.]

Ford, W. H.,	210 00
Gilliam & Co.,	309 00
Perkins, Jno. W.,	142 50
Langley, Z. A., & Co.,	136 50
Curle, Jno. W., ag't,	141 00
Wolling, R. M., & Co.,	187 50
Hutter, C. S.,	45 00
Smith, Stuart & Co.,	123 00
Almond, C. H.,	78 00
Scott & Noble,	108 00
Lee, J. L.,	39 00
Martin & Gannaway, and M., G. & Co.,	133 50
Ward, D. L.,	105 00
Lavinder, N. H.,	81 00
Aunspaugh & Cobbs,	178 50

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[Not marked.]

Mallan, Mary,	10 50
Mallan Bros.,	10 50
Tunstall, A. A.,	15 00
Larkin, W. W.,	25 50
Roberts, W. P., & Bro.,	15 00
	$6,967 50
Jones, Wm. H., marked,	99 00

Received,

11 May, '88. CH. P. LATHAM, Judge.

Lynchburg, 1888.

Rec'd of J. W. Bransford, treasurer, the following envelopes, stated and said to contain coupons as listed below:

[Larkin—Writs served.]

Langley, R. A.,	138 00
Breathed, J. W.,	30 00
Johnson, Esthill,	205 50
Mallan, J. P.,	195 00
Jones, W. S.,	30 00
Collins, Dan'l,	142 50
Manning, Jno.,	205 50
Halbig, John,	162 00
McCarron, M.,	142 50
Butler, A. W.,	100 50

Kegney, M.,	205 50
Gills & Anderson,	34 50
Reynolds, J. J. & Co.,	169 50
Bigbie, Bros. & Co.,	412 50
Hurley, J. J.,	139 50
Smith, Lewis E.,	138 00
Fazzi, R.,	214 50
Lucado & Sons,	289 50
McCarran, Frank,	205 50

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Lazarus, L.,	240 00
O'Brien, Thos.,	211 50
Callan, Pat,	219 00
Manning, Thos. A.,	210 00
Norvell, Geo. W.,	138 00
Roberts, J. J. & Bro.,	10 50
Cantieri, B. & Co.,	180 00
Fealey, Jas. M.,	205 50
Byrnes, Matt.,	210 00
Martin, Pat,	210 00
Carter, R. H.,	253 50
Jackson, J. W.,	145 50
Over,	$5,394 00
	$5,394 00

[6th June, '88. Larkin—Writs served.]

Dillard, J. T.,	42 00
Lee & Co.,	249 50
Guggenheimer & Co.,	474 00
Smith, Thos., Jr.,	274 50
Parsons, C. H.,	138 00
Cantieri, B.,	220 50
Terry, R. S.,	379 50
Cheatham, J. B.,	138 00
Robinson, Tate & Co,	253 50
Mallan, J. J. & Bro.,	147 00
Morrison, D. P.,	210 00
Magri, F. J.,	205 50
Gregory, Jas. H.,	187 50
Tanner, Jno. D.,	210 00
Wall, John,	130 50
Baughan & Sheffey,	39 00
	$8,691 00

Lynchburg, 5th June, 1888.

Rec'd the above for identification and verification 6th June, '88.

CH. P. LATHAM, Judge.

page 120 } The above is the list referred to by W. D. Nowlin in his evidence in the case of Callan vs. Bransford. (See evidence, p. 63.)

J. N. WHITTAKER,
Stenographer C. C., Lynchburg.

[Page 121 and 122.]

List of Cases in Which Coupons are Tendered and Money Paid Under Protest, License Cases, 1888.

(See Day-Book, pp. 73–74.)

1	April 30	F. J. Magri, license 1888,	205		20 pr ct. p'd cash,		40	80	Assigned to W. W. Larkin for value. Frank Magri.			
2	"	J. D. Tanner,	210		20 "	"	42	00	"	"	"	"
3	"	Jas. M. Fealey,	205		20 "	"	40	80	"	"	"	"
4	"	R. H. Carter,	253	75	20 "	"	50	42	"	"	"	"
5	"	John Helbig,	162		20 "	" pd.	32	40	"	pd.	R. H. Carter, John Helbig.	
6	"	Bigbie Bros. & Co.,	412	50			100	00	"		Bigbie Bro. & Co.	
7	"	Pat Callan,	222	00			44	40	"		Pat his ✕ mark Callan.	
8	"	Jno. Wall, furnish'd his own ex., 10 50	130	50	"							
9	"	J. H. Gregory,	187	50			37	50				
10	"	J. H. Jackson, (included J. H. Jackson)'87, last yr, 31 '88, 28 20 Ck, 59 20	145	50	"		59	20			J. W. Jackson.	
11	"	R. A. Langley, 1887, 31 00 1888, 27 00 58 00	$138.00	137	50	"		58	00			R. A. Langley.

12	"	Geo. W. Norvell,	31 '87 27 '88 —	137 50		"	58 00		Geo. W. Norvell.
13	"	C.H.Parsons,1887,	31 27 — 58	138.00	137 50	"	58 00		C. H. Parsons.
14	"	R. S. Terry,		380 00		"	75 60	Assigned.	
15	"	Eshill Johnson,		205 00		"	40 80	Assigned to W. W. Larkin.	Esthill Johnson.
16	"	Guggenheimer & Co.,		474 00		pd.	100 00	" " "	
17	"	Robinson, Tate & Co.,		254 00	20 pr ct. pd.		40 40		
18	"	Lee & Co.,		248 00					
19	"	J. J. Hurley,		140 00			34 50	Assigned.	J. J. Hurley.
20	"	Matt. Byrne,		310 00			52 50		M. Byrne.
21	"	Jas. Manning,		205 00			40 80		John Manning.
22	"	Thos. Manning,		210 00			52 50		T. A. Manning.
23	"	P. Martin,		210 00			52 50		P. Martin.
24	"	D. P. Morrison,		210 00			52 50		D. P. Morrison.
25	"	J. P. Mallan,		195 00			48 75		J. P. Mallan.
26	"	J. J. Mallan & Bro.,		147 50			36 75		J.J.Mallan & Bro
27	"	J. B. Cheatham,		137 50			27 00		J. B. Cheatham.

[Pages 123 and 124.]

28	"	Louis E. Smith,		137 50			27 00		L. E. Smith.
29	"	L. Lazarus,		237 50	20 pr ct.		47 40		L. Lazarus.
30	May 1.	Thos. O'Brien,		211 00			52 50	Thos. O'Brien, *for* T. A. Manning.	
31	"	Bonds, *omit*,		210 00			42 00	W. H. Ford, by B. W. Holt.	

32	"	J. J. Roberts & W. P. Roberts p't's as J. J. R. & Bro.,	10 00	10 00			W. P. Roberts & Bro.
33	"	W. P. Roberts & J. J. Roberts p't's as W. P. R. & Bro.,	15 00	15 00	4	80	J. J. Roberts & Bro.
34	"	J. J. Reynolds & Co. (Ferguson, M. P.),	170 00		33	90	J. J. Reynolds & Co.
35	"	Frank McCarron,	205 00		51	00	F. McCarron.
36	"	M. Kegney,	205 00		51	00	M. Kegney.
37	"	B. Cantieri & Co.,	180 00				B. Cantieri & Co.
38	"	B. Cantieri,	220 00				B. Cantieri.
39	"	A. W. Butler ($99),	100 00		19	80	
40	"	Baughan & Sheffey,	38 50				
41	"	M. McCarron,	142 50				
1888.							
42	May 1.	Thos. Smith, Jr.,	274 50		59	40	
43		Mrs. W. S. Jones (W. S. J. & McJ.),	30 00		6	00	Mrs. W. S. Jones.
44		Daniel Collins,	142 50		35	25	
45		Gills & Anderson, tax $34,	34 50		6	00	Gills & Anderson.
46		Lucado & Sons (coup's, 289.50),	289 00				
47		R. Fazzi (license, $215),	214 50				
48		J. T. Dillard ($42 coup.),	41 50				
—		A. A. Tunstall,	15 00				
49		J. W. Breathed,	30 00				
		Mary Mallan ($10.50),	10 00				
		J. Mallan and W. H. Mallan, as Mallan Bros. ($10.50),	10 00				

And thereupon the court signs, seals, and enrolls this as part of the record, showing the proceedings to be availed of on writ of error.

J. SINGLETON DIGGS, [Seal.]

A copy—Teste:

S. G. WINGFIELD, Cl'k.

page 128 } I certify that it appears by a paper writing, filed with the papers in the above-named cause, that notice, as required by § 3457, was duly given.

Teste:

S. G. WINGFIELD, Cl'k.

The fee of the clerk of the Corporation Court for the city of Lynchburg for making out said transcript is $42.44.

Teste:

S. G. WINGFIELD, Cl'k.

A copy—Teste:

GEO. K. TAYLOR, C. C.

105 And now, at this day, to wit, at a supreme court of appeals held at the State court-house, in the city of Richmond, on Thursday, the 5th day of December, 1889 (being the day and year first herein mentioned), came again the parties, by their counsel, and the court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the amount in controversy in this cause, exclusive of costs, is below the jurisdiction of this court; it is therefore considered by the court that the same be dismissed, and that the defendant in error recover against the plaintiff in error his costs by him about his defence herein expended.

Which is ordered to be certified to the said corporation court of the city of Lynchburg.

106 STATE OF VIRGINIA, } *So wit:*
City of Richmond, }

I, George K. Taylor, clerk of the supreme court of appeals, at Richmond, do hereby certify that the foregoing is a true transcript of the record and proceedings lately depending in the said supreme court of appeals of Virginia, in which Pat. Callan was plaintiff in error and Jown W. Bransford, treasurer of the city of Lynchburg, was defendant in error.

Seal Supreme Court of Appeals of Virgina, Richmond.

In testimony whereof I hereto set my hand and annex the seal of said court this 30th day of June, 1890.

GEO. K. TAYLOR,
Clerk of Supreme Court of Appeals of Virginia, at Richmond.

107 To the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States:

Your petitioner, Pat. Callan, respectfully represents that he is aggrieved by a final judgment of the supreme court of appeals of the State of Virginia, pronounced on the — day of ——, 1889, in an action wherein your petitioner was appellant and John W. Bransford, treasurer of the city of Lynchburg, was appellee. The said judgment affirmed a judgment of the corporation court of said city of Lynchburg, which latter judgment equally aggrieved your petitioner.

A transcript of the record of said judgment is herewith presented. By inspecting it will be perceived that your petitioner claimed a right under the Constitution of the United States, and that said right was denied him by both of said courts.

Your petitioner therefore prays a writ of error, and that said judgment be reversed.

To avoid unnecessary repetition your petitioner refers to his peti-

tion for a writ of error to the State supreme court, to be found at page one of the transcript of the record, which is as applicable to this petition for a writ of error as it was to the State supreme court.

Your petition- is advised that "the right of the coupon-holder is to have his coupon received for taxes when offered, and that any act of the State which forbids the receipt of coupons is a violation of the contract and, as against coupon-holders, is null and void."

The bills of exception, to be found on pages 8, 9, and 10 of the record, show that the questions as to the admissibility of expert testimony; the right to call for the production of the bond, with proof that the coupon was cut therefrom, when the plaintiff knew nothing of the existence of the bond or its custody, and the
108 right to have his coupon received when tendered in payment of his taxes by the coupon-holder, are all Federal questions which are plainly presented by the record and the bills of exception referred to, save the points, though they seem to be ignored by the court.

The acts which justify the rulings of the court and those acts which forbid the officer to receive coupons in payment of taxes have been declared, as well as all similar acts, to be void, because they impair the obligation of contracts, and this "end can be accomplished unwarrantable no more by judicial decisions than by legislation." Pine Grove Township *v.* Talott, 19 Wall., 227.

The attention of the court is called to the following additional assignments:

The remedy of the coupon-holder afforded by the acts of 26 Jan'y, 1882, and amendments have been declared null, and void by the court as offering no remedy at all. Poindexter *v.* Greenhow, 114 U. S.

The only other act providing a remedy is the act of 14 Jan'y, 1882, which was sustained by the court in Antoni *v.* Greenhow, U. S., as in lieu of the writ of mandamus, and is no remedy in a proceeding like this.

The right asserted in this proceeding is a common-law remedy, assumpsit for money had and received, which was paid under protest—2 Rob. Pr., new ed., 449, 473—a common-law remedy for a common law right.

The right claimed here is not a right created by statute, nor is there a remedy by statute. Clearly, then, the common-law remedy exists. The attempt has been made to give a statutory remedy or to repeal that at common law.

Where there is created a liability by statute and a statutory remedy is provided, the statutory remedy is exclusive; not so here.

The liability of the officer is by the common law. See Raynsford *v.* Phelps, 43 Mich., 342, and cases cited. See rules laid down
109 by Willis, J., in Wolverhampton Water Works Co. *v.* Hawksford, 28 L. I. C. P., 242. See also note to Ashby *v.* White *et alios*, 1 Smith's Leading Cases, bottom of p. 508, last ed.

The opinion of the supreme court of appeals is herewith attached.

PAT. CALLAN,
By W. W. LARKIN, *His Atto.*

In the Supreme Court of Appeals of Virginia, at Richmond.

CALLAN
v.
BRANSFORD, Treasurer, and Forty-Four Other Cases.

Opinion.

LACY, *J.:*

This is a writ of error to a judgment of the corporation court of the city of Lynchburg, rendered on the 4th day of June, 1889, in this and forty-four other cases submitted with this.

The action in this and all the cases submitted with this is assumpsit for the recovery of two hundred and twenty-two dollars which was paid to the defendant in error for taxes due to the State of Virginia, as provided by the general assessment and tax laws of the Commonwealth.

The plaintiff in error claims to have tendered certain printed or engraved slips claimed by him to be the obligations of the State. But, however this may be, this suit is an action to recover from the defendant in error money amounting to two hundred and twenty-two dollars. It is not a suit to compel the receipt on the part of the State of her obligations, but simply an action to recover the stated sum of money.

The judgment of the corporation court was against him and he applied for a writ of error to this court, which was awarded by one of the judges.

Sundry exceptions were taken to the rulings of the corporation court at Lynchburg, which are assigned as errors here.

Section 2 of article VI of the Virginia constitution provides as follows:

"SEC. 2. The supreme court of appeals shall consist of five judges, any three of whom may hold a court. It shall have appellate jurisdiction only, except in cases of *habeas corpus*, mandamus, and prohibition. It shall not have jurisdiction in civil cases where the matter in controversy, exclusive of costs, is less in value or amount than five hundred dollars, except in controversies concerning the title or boundaries of land, the probate of a will, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, roadway, ferry, or landing, or the right of a corporation or a county to levy tolls or taxes, and except in cases of *habeas corpus*, mandamus, and prohibition, or the constitutionality of a law: Provided, that the assent of a majority of the judges elected to the court shall be required in order to declare any law null and void by reason of its repugnance to the Federal Constitution or to the constitution of this State."

The amount in controversy here in this suit, and in each of the forty-four others herein submitted with this, is less than the jurisdictional sum of five hundred dollars, and is entirely pecuniary in character. This case (nor any other of the submitted cases) does not come within any of the above-recited exceptions. The defendant in error could discharge himself from all and every demand set up by the plaintiff in error, whose whole complaint would be satisfied by the payment to him of the sum of $222. That is all he puts in issue by the pleadings and is all that is involved in this suit. The right to levy a tax is not involved and the constitutionality of no law is drawn in question. The controversy is purely pecuniary, and as the sum contended for by the plaintiff in error and involved in the suit is less than the said jurisdictional sum of five hundred dollars, the judgment of the corporation court of Lynchburg is final in the premises, and connot be reviewed in this court without a violation of the above-recited provision of the constitution of Virginia (McIntosh, &c. *v.* Braden, 80 Va., 217), and this is true of each of the other forty-four cases aforesaid.

We are of opinion, therefore, that the writ of error herein and in each of the forty-four cases aforesaid was improvidently awarded, and the same must be dismissed in this case and in each of the forty-four other cases submitted with this case.

Writ of error dismissed.

Lewis, P., dissents.

110 [Endorsed:] Pat. Callan, plaintiff in error, *v.* Jno. W. Bransford, treasurer. In error to the supreme court of appeals of Virginia.

Writ of error allowed Feb. 15th, 1890.

MELVILLE W. FULLER,
Chief Justice of the United States.

111 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Pat. Callan, plaintiff in error, and John W. Bransford, treasurer of the city of Lynchburg, Virginia, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said

State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute
112 of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 15th day of February, in the year of our Lord one thousand eight hundred and ninety.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
MELVILLE W. FULLER,
Chief Justice.

113 VIRGINIA:

IN THE CLERK'S OFFICE OF THE SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND, *June 30th*, 1890.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand this 30th day of June, 1890.

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

[Endorsed:] Original.

114 UNITED STATES OF AMERICA, *ss:*

The President of the United States to John W. Bransford, treasurer of the city of Lynchburg, Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein Pat. Callan is plaintiff in error and you are defendant in erorr, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety.

MELVILLE W. FULLER,
Chief Justice of the United States.

115 On this 20th day of February, in the year of our Lord one thousand eight hundred and ninety, personally appeared Junius C. Didlake before me, the subscriber, Samuel Tyree, a notary public in and for the city of Lynchburg, State of Virginia, and makes oath that he delivered a true copy of the within citation to John W. Bransford, treasurer of the city of Lynchburg, Va.

J. C. DIDLAKE.

Sworn to and subscribed the 20th day of February, A. D. 1890.

SAMUEL TYREE,
Notary Public.

[Endorsed:] Original.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the foregoing citation is on file in my office.

Given under my hand this 30th June, 1890.

GEO. K. TAYLOR,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

116 Know all men by these presents that we, W. W. Larkin, Thomas N. Larkin, and Robert B. Stratton, of the city of Lynchburg, State of Virginia, are held and firmly bound unto John W. Bransford, treasurer of the city of Lynchburg, Va., and of the city aforesaid, in the full and just sum of five hundred dollars, to be paid to the said Jno. W. Bransford, treasurer, or his certain attorney, executors, administrator, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of February, 1890.

Whereas lately, at a term of the supreme court of appeals of Virginia held in the city of Richmond, Virginia, on the 5th day of December, 1889, in a suit depending in said court between Pat. Callan, appellant, and Jno. W. Bransford, treas'r of the city of Lynchburg, Va., brought on a writ of error to reverse a judgment of the

corporation court of Lynch burg, State of Virginia, a judgment was rendered against the said Pat. Callan, appellant in the above-entitled cause, in the said supreme court of appeals of Va., and the said Pat.
Callan having obtained a writ of error and filed a copy
117 thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Jno. W. Bransford, treas'r, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Pat. Callan shall prosecute this writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

RO. B. STRATTON [SEAL.]
W. W. LARKIN, *Surety.* [SEAL.]
THOS. N. LARKIN. [SEAL.]

Sealed and delivered in presence of—
R. S. ELLIS.
S. A. DAVISEN.
B. M. HOLT.

Approved by—
HUGH L. BOND, *C't Judge.*
M. W. FULLER,
Chief Justice.

A copy.
Teste: GEO. K. TAYLOR, *C. C.*

118 VIRGINIA:

IN THE CLERK'S OFFICE OF THE SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND, *June 30th*, 1890.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do certify that the original bond, of which the foregoing is a true copy, is on file in my office.

Given under my hand.

GEO. K. TAYLOR,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

Endorsed on cover: Virginia sup. court appeals. No. 1271. Pat. Callan, plaintiff in error, *vs.* John W. Bransford, treasurer of the city of Lynchburg, Virginia. Filed September 6, 1890.

Office Supreme Court U. S.
FILED.
OCT 17 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1271.

PAT. CALLAN, PLAINTIFF IN ERROR,

vs.

JNO. W. BRANSFORD, TREASURER OF THE CITY OF LYNCHBURG, VIRGINIA.

In error to the Supreme Court of Appeals of the State of Virgina.

FILED SEPTEMBER 6TH, 1890.

MOTION TO ADVANCE.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1271.

PAT. CALLAN, PLAINTIFF IN ERROR,

vs.

JNO. W. BRANSFORD, TREASURER OF THE CITY OF LYNCHBURG, VIRGINIA.

In error to the Supreme Covrt of Appeals of the State of Virgina.

FILED SEPTEMBER 6TH, 1890.

NOTICE OF MOTION.

LYNCHBURG, VA., OCT. 7, 1890.

To Jno. W. Bransford, Treasurer of the City of Lynchburg, Virginia:

Take notice that I will on Monday, October 13th, move the United States Supreme Court to amend the record in the case of Pat. Callan, plaintiff in error vs. you as Treasurer of the City of Lynchburg, Virginia. In error to the Supreme Court of Appeals of Virginia. The object of said amendment being to include the forty-four other cases submitted, together with the above-named case in the State Courts, there being in the State Courts actually but one trial had, and the other forty-four cases submitted as one case, and so heard and passed on, as shown by the Record. I will also at the same time move the said Supreme Court of the United States to advance the said case on the Court docket.

PAT. CALLAN, by
W. W. LARKIN, Att'y.

I acknowledge service of the above document this the 8th day of October, 1890.

JOHN. W. BRANSFORD,
Treasurer.

MOTION TO ADVANCE.

A motion is made to amend the Record in this case, and if allowed by the Court, the case will embrace forty-four other cases, which were heard both in the lower and Supreme Courts of the State as one case, the facts and the law being the same in each. The Record supplies the means of amendment.

The cases should have been under circumstances consolidated, or others should have awaited the result of one as a test case. Efforts to this end failed.

If motion to amend should be denied, the great expense of taking writs of error in each of these cases would have to be borne, or the cases would soon be barred by limitation.

Claim of plaintiff: That after tender of tax-receivable coupons of the State, and acceptance by the defendant, payment was demanded in money, as a condition precedent to issuing license. This second payment was made *under protest.*

Plaintiff, waiving tort, brought common law action of assumpsit for money had and received. Plea, general issue.

Verdict under instructions of the Court for defendant. Exceptions to rulings of the Court.

The record shows (p. 8) that the genuineness of the coupons paid for taxes was drawn in question, and expert evidence was offered and rejected by the Court.—See Exception No. 1, p. 8, printed Record.

The defendant demanded the production of the bonds from which these coupons were cut, with proof of the fact of cutting, and objected to any other testimony. This demand the Court sustained.—Exception No. 2, id. These exceptions to the rulings of the Court presented sharply the constitutionality of the statutes of the State. Yet the Supreme Court of Appeals (see opinion, p. 101 of Record) holds that the pecuniary consideration being in each case less than $500—the jurisdictional sum—the writ of error was improvidently awarded. This *decision* impairs the obligation of the State contract with the couponholders who are tax-payers.—Art. 1, § 10, U. S. Constitution.

These coupon cases, in view of peculiar circumstances, involve great pecuniary interests in which the public are concerned, to have their rights, under the Constitution of the Union, maintained, which are now grossly violated and daily denied.

The "*unfriendly legislation*," by which these rights are sought to be overthrown, is a matter of public notoriety.

The unfriendly decisions of the Courts sustain with great unanimity these unconstitutional acts of legislation.

The spectacle of a sovereign State systematically attempting to defeat the rights of individuals as secured by the Constitution of the United States is presented.

The whole machinery of the State, regardless of expenses, is enlisted to overturn the constitutional rights of the subject.

We submit that it is a solemn duty of the judicial department of the government of the Union, to protect citizens thus menaced and oppressed.

These facts are briefly cited as a reason for advancing these cases.

PAT. CALLAN, by
W. W. LARKIN, Att'y.

FILED
FEB 23 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1890.

PAT CALLAN, Plaintiff in error, vs. JOHN W. BRANSFORD, Treasurer, &c.	No. 1271.
WM. H. JONES, Plaintiff in error, vs. THE COMMONWEALTH OF VIRGINIA.	No. 1594.
J. J. DILLARD, Plaintiff in error, vs. E. S. MOORMAN, Treasurer, &c.	No. 1638
GREGORY ET ALS., Plaintiffs in error, vs. BRANSFORD, Treasurer, &c.	No. 1595.
LITCHFORD, surviving partner, &c., Plaintiff in error, vs. DAY, Sergeant, &c.	No. 1598.
LAWSON, ET ALS., Plaintiff in error, vs. BRANSFORD, Treasurer, &c.	No. 1597.
MALLAN BROS., Plaintiff in error, vs. BRANSFORD, Treasurer, &c.	No. 1596.

MOTION TO ADVANCE.

J. P. BELL CO., LYNCHBURG, VA.

Supreme Court of the United States,

OCTOBER TERM, 1890.

PAT CALLAN, Plaintiff in error, vs. JOHN W. BRANSFORD, Treasurer, &c.	No. 1271.
WM. H. JONES, Plaintiff in error, vs. THE COMMONWEALTH OF VIRGINIA.	No. 1594.
J. J. DILLARD, Plaintiff in error, vs. E. S. MOORMAN, Treasurer, &c.	No. 1638
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MALLAN BROS., Plaintiff in error, vs. BRANSFORD, Treasurer, &c.	No. 1596.

MOTION TO ADVANCE.

And now come the said plaintiffs in error and move the court to advance these causes on the Docket, so that the same may be heard at this term, and to fix a day certain for the hearing thereof.

PAT CALLAN AND OTHERS,

By W. W. LARKIN, their Attorney.

Supreme Court of the United States.

PAT CALLAN, Plaintiff in error, vs. JOHN W. BRANSFORD, Treasurer, &c.	No. 1271.
WM. H. JONES, Plaintiff in error, vs. THE COMMONWEALTH OF VIRGINIA.	No. 1594.
J. J. DILLARD, Plaintiff in error, vs. E. S. MOORMAN, Treasurer, &c.	From the Corporation Court of Lynchburg, Va.
GREGORY, ET ALS., Plaintiffs in error, vs. BRANSFORD, Treasurer, &c.	No. 1595.
LITCHFORD, surviving partner, &c., Plaintiffs in error, vs. DAY, Sergeant, &c.	No. 1598.
LAWSON, ET ALS., Plaintiffs in error, vs. BRANSFORD, Treasurer, &c.	No. 1597.
MALLAN BROS., Plaintiffs in error, vs. BRANSFORD, Treasurer, &c.	No. 1596.

In error to the Supreme Court of Appeals of Virginia, except the case of J. J. Dillard vs. E. S. Moorman, Treas., &c., which is from the Corporation Court for the city of Lynchburg, that being the highest court in the State to which it could by law be taken.

ASSIGNMENT OF REASONS.

The case of Pat Callan is an action of assumpsit for money had and received, the said Callan having tendered coupons which were received contrary to statute by said treasurer; the money was also demanded in payment, which was paid under protest, and action was brought to recover on account of double

payment. Plaintiff offered to prove the genuineness of said coupons by expert testimony, but the defendant demanded the production of the bonds from which said coupons were cut, with proof that the same were cut therefrom, and objected to any other testimony, which demand the court sustained; exceptions duly taken, presenting the question of the constitutionality of said statutes.

This is one of forty-five cases; the plaintiff was not allowed to consolidate these cases, and an effort to make a test case with the others to abide the decision therein was not successful, and writs of error were taken in each of the forty-five cases. It is desired to have this decided before the statute of limitations applies and bars the writ in the remaining cases.

The case of W. H. Jones against the Commonwealth is a writ of prohibition awarded by the Court of Appeals of Virginia to prevent the prosecution of a suit against the collecting officer, and in which an injunction had been awarded to prevent sale of tax-payers property after tender and refusal of coupons, and tender kept good and brought into court in the Corporation Court of Lynchburg, which restrained the sergeant of said city from selling property for the payment of cost due Commonwealth after coupons had been tendered in payment of such cost.

The case of Dillard v. Moorman, Treasurer, &c., involves the question of jurisdiction of a Justice's court to entertain a suit to recover the sum of $30, paid under protest after coupons had been tendered and refused by the collector.

The case of Mallan Bros. v. Bransford, Treasurer, &c., is a writ of prohibition granted to prevent the collection of an execution issued by a Justice of the Peace on a judgment for the sum of $10.00, being a recovery of money paid for taxes under protest after tax-receivable coupons had been tendered and refused.

The cases of Gregory, et als.; Litchford, surviving partner, &c., and Lawson, et als., involve the question of the right to appellate proceedings in cases wherein was drawn in question the validity of a State statute on the grounds of its repugnancy

to the constitution and laws of the United States, and the decision of the court was in favor of its validity. It is claimed that the court does not eliminate the "Federal question" by ignoring and failing to take notice of such questions, when properly presented.

The decisions in the above cases are all of them in absolute disregard of the constitution and laws of the United States. They do not recognize the constitution and laws of the United States as the supreme law of the land. See dissenting opinion of Lewis P. in Commonwealth v. Latham J. (Jones' case) above named.

Special attention is invited to the three batches of cases last named. In these the tender was brought into court, and the collecting officer was enjoined from levying upon the property of the tax-payers; but, notwithstanding this, the Commonwealth by its officers, by *subsequent* proceedings under the act known as "The Coupon Crusher," got repeated judgments, which were recorded as a lien upon the real estate of the tax-payers, and upon frivolous pretensions the court set aside the settlement made by which it had been declared that the taxes had been paid by the said tender kept good and paid into court as aforesaid.

These coupon cases, in view of peculiar circumstances, involve great pecuniary interests in which the public are concerned, to have their rights, under the Constitution of the Union, maintained, which are now grossly violated and daily denied.

The "*unfriendly legislation*," by which these rights are sought to be overthrown, is a matter of public notoriety.

The unfriendly decisions of the Courts sustain with great unanimity these unconstitutional acts of legislation.

The spectacle of a sovereign State systematically attempting to defeat the rights of individuals as secured by the Coustitution of the United States is presented.

The whole machinery of the State, regardless of expenses, is enlisted to overturn the constitutional rights of the subject.

We submit that it is a solemn duty of the judicial department of the government of the Union, to protect citizens thus menaced and oppressed.

These facts are briefly cited as a reason for advancing these cases.

W. W. LARKIN, Att'y,
For Plaintiffs in Error.

LYNCHBURG, VA., January 28th, 1891.

To John W. Bransford, Treasurer for the city of Lynchburg, Va.; M. J. Day, late Sergeant for the city of Lynchburg; R. Taylor Scott, Attorney General for the Commonwealth of Virginia:

Take notice that I will on Monday, the 16th day of Feb., 1891, move the Supreme Court of the United States to advance the above entitled cases on the docket of the said court.

W. W. LARKIN,
For Plaintiffs in Error.

STATE OF VIRGINIA—CITY OF LYNCHBURG, to-wit:

I, J. N. Whittaker, a Notary Public for the city of Lynchburg, in the State of Virginia, do hereby certify that Basil M. Holt personally appeared before me and made oath that he, on the 31st day of January, 1891, delivered a true copy of the papers hereto annexed in person to John W. Bransford, Treasurer, &c., and M. J. Day, late Sergeant, &c., and that he mailed a similar copy of said paper to R. Taylor Scott, Attorney-General, Richmond, Va.

Given under my hand this 31st day of January, 1891.

J. N. WHITTAKER,
Notary Public.

Office Supreme Court U. S.
FILED.
MAR 2 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1890.

PAT CALLAN, Plaintiff in Error,
vs.
JOHN W. BRANSFORD, Treasurer, &c. } No. 1271.

WM. H. JONES, Plaintiff in Error,
vs.
THE COMMONWEALTH OF VIRGINIA. } No. 1594.

J. J. DILLARD, Plaintiff in Error,
vs.
E. S. MOORMAN, Treasurer, &c. } No. 1638

GREGORY ET ALS, Plaintiffs in Error,
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LITCHFORD, surviving partner, &c., Plaintiff in Error,
vs.
DAY, Sergeant, &c. } No. 1598.

LAWSON ET ALS., Plaintiffs in Error,
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BRANSFORD, Treasurer, &c. } No. 1597.

MALLAN BROS., Plaintiff in Error,
vs.
BRANSFORD, Treasurer, &c. } No. 1596.

BRIEF IN REPLY TO APPELLEES, OPPOSING MOTION TO ADVANCE AND ADVOCATING MOTION TO DISMISS.

W. W. LARKIN, FOR APPELLANTS.

J. P. BELL CO., LYNCHBURG, VA.

We submit that it is a solemn duty of the judicial department of the government of the Union, to protect citizens thus menaced and oppressed.

These facts are briefly cited as a reason for advancing these cases.

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For Plaintiffs in Error.

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Given under my hand this 31st day of January, 1891.

J. N. WHITTAKER,
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BRIEF IN REPLY TO APPELLEES, OPPOSING MOTION TO ADVANCE AND ADVOCATING MOTION TO DISMISS.

W. W. LARKIN, FOR APPELLANTS.

J. P. BELL CO., LYNCHBURG, VA.

Supreme Court of the United States,

OCTOBER TERM, 1890.

PAT CALLAN, Plaintiff in Error, vs. JOHN W. BRANSFORD, Treasurer, &c.	No. 1271.
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BRIEF IN REPLY TO APPELLEES, OPPOSING MOTION TO ADVANCE AND ADVOCATING MOTION TO DISMISS.

W. W. LARKIN, FOR APPELLANTS.

Supreme Court of the United States,

The appellees' brief so mixes the matter of the motion to advance and the motion to dismiss for want of jurisdiction, with an argument on the questions involved in the merits in these cases, that it is difficult to separate one from the others.

No. 1271 (Callan vs. Bransford, Treasurer), money was paid for license. The ground of action is the arbitrary refusal of the Treasurer to perform a ministerial duty and refusal to receive coupons except upon a "deposit," contrary to statute, and for receiving coupons otherwise than for verification, and for exacting and receiving a double payment. *Huchless* vs. *Childrey* is not in point. Record, page 10, shows the Federal question presented by bills of exception. The case of *Cary* vs. *Curtis*, 3 How., referred to by appellee, was decided under Act of Congress of March, 1839, which repealed the common law remedy of assumpsit; by Act of 1845, this remedy was restored; now, however, the matter is entirely statutory and exclusive.—*Arnson* vs. *Murphy*, 109 U. S., 258. *Cary* vs. *Curtis* is, therefore, no authority for appellees. "That a public officer, having ministerial duties to perform, in which a private individual has a special and direct interest, is liable to such individual for any injury sustained by him in consequence of the failure to perform such duties."—43 Mich., 342; 28 Amer. Rep., 189, and cases cited; also, *Ashby* vs. *White*, 1 Smith's Leading Cases. In many cases the tort may be waived and the party sue in assumpsit.

In No. 1595, 1598 and 1597, coupons were tendered in payment of taxes and kept good by payment into court, and adjudged by the Court to be a satisfaction of such taxes and receipts were given by order of Court in accordance therewith, but upon the expiration of the term of offices a new Judge of this Corporation Court succeeded, who reviewed the decision of the former Judge and reversed the judgment so entered by

him, and the Federal question presented is simply the right of the tax-payer to pay his taxes in coupons. A full statement of the facts are set out in the petition to this Court and in the bill before the Corporation Court.

The batches of cases embraced in Lawson et als., Gregory et als. vs. Bransford, Treasurer, and the case of Litchford et als. vs. Day, Sergeant, present numerous independent causes, in each of which the tender of coupons for taxes was kept good by being brought into court, and in which proceedings the trial court adjudged that the taxes were paid by these tenders thus kept good, and ordered receipts to be executed by the clerk which should be evidence of the fact. A newly-elected Judge, on bills of review, which assigned no errors, except by general assertion of error without designation, annulled these decrees, and hundreds of people, in fact the tax-paying public of this community are suffering judgment upon judgment of trifling amounts, by which their real estate is so covered over with liens that they are reduced to pauperism by these oppressive and unconstitutional methods. These proceedings, by motion, were taken after the court aforesaid had taken jurisdiction for the purpose of settling the question of tender and payment into court. The court, in these proceedings, before any notice of motion was served, had declared the taxes paid. By a retroactive effect given to the Act known as the "Coupon-Crusher," which crushes every property right of the coupon tax-payer, was, by proceedings taken after payment by the tenders kept good as aforesaid, contrary to the opinions of this Court in cases involving questions identical in every respect, deprived of their rights secured to them by the Constitution. Under these circumstances, it is suggested that these cases are, on motion to advance, embraced within the reasoning of Rule 26–4, as to "cases once adjudicated by this Court upon the merits and again brought up by writ of error or appeal, may be advanced by leave of the Court on motion of either party."

In No. 1598, Litchford, &c., vs. Day, Sergeant, &c., the Judge of the Appellate Court, delivering the opinion of the Court, is mistaken in supposing that a full copy of the record

was not made. The original bills—fifty-two in number—were copied in the record, but being similar in all respects, and involving about thirty dollars for costs in each case, it was not deemed necessary to do more than to print a complete record of the proceedings had on the Bill of Review appealed from and one additional bill, which was supposed to be in accordance with the requirement of the Judge of the lower Court. The Appellate Court was asked, as will appear from N. B, bottom of page 4, to dispense with the printing of the record in forty-nine cases, as said cases presented the same questions of law and fact as was presented in the proceedings upon the Bill of Review, and the attention of the Appellate Court and of counsel being thus called to the matter, it was taken for granted by the appellant that if any objection was taken he would be notified in time to have that record printed. This is in accordance with precedents established in said Court. The record will be amended, on motion, by supplying the records of the forty-nine cases as aforesaid, or by writ of *certiorari* directed to the Clerk of said Appellate Court.

The Record, on which appeals were granted, were complete; it was only an omission that all were not printed.

No. 1594 (case of W. H. Jones), was originally a petition for verification of coupons, decided in his favor; State appealed; the case was reversed, with cost to the State; the Corporation Court issued executions in favor of the State for these costs; coupons were tendered in payment of these executions and refused. The officer was enjoined from levying on the chattels of Jones, who paid the coupons tendered into court.

Thus the Corporation Court had already complete jurisdiction; the tender kept good by payment into Court discharged the judgment to the State.

The Federal question, therefore, involved in this case is the right of said Jones to pay the judgment awarded against him in favor of the Commonwealth of Virginia, in coupons. Reference is made to the petition for writ of error and the answer of said Jones, with authorities, to be found on page 11 of the Record, and it will appear from said authorities that the Cor-

poration Court had complete jurisdiction of said case; the coupons tendered and kept good by payment into Court were in satisfaction of the demand of the Commonwealth, and the Federal question is fully set out in the bill filed in said Corporation Court. The executions satisfied by coupons was the end of the law.

The cases of Dillard vs. E. S. Moorman, No. ——, and Mallan Bros. vs. Bransford, No. 1596, involve the question as to whether small amounts of money paid under protest along with the coupons tendered can be recovered before a justice of the peace. It is submitted that this question is decided by the ruling of the Court in *Poindexter* vs. *Greenhow*, 114 U. S. Rept. In the case of Dillard vs. Moorman the facts are certified by the Court, pp. 5–6, and present a Federal question upon said certificate. The certificate of the trial justice in the case of Mallan Bros., (see Record, pp. 6–7) is conclusive of the facts in that case.

Respectfully submitted,

W. W. LARKIN,
Attorney for Appellants.

FEB 24 1891

JAMES F. McKENNEY
CLERK

IN THE Supreme Court of the United States.

October Term 1890.

PAT. CALLAN, Plaintiff in Error,
vs.
J. W. BRANSFORD, Treasurer. } No. 1271.

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REPLY BRIEF OF R. TAYLOR SCOTT, FOR APPELLEES, TO W. W. LARKIN, FOR APPELLANTS, MOTION TO ADVANCE AND IN SUPPORT OF MOTION BY APPELLEES TO DISMISS THESE SUITS.

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Respectfully submitted,

W. W. LARKIN,
Attorney for Appellants.

Office Supreme Court U. S.
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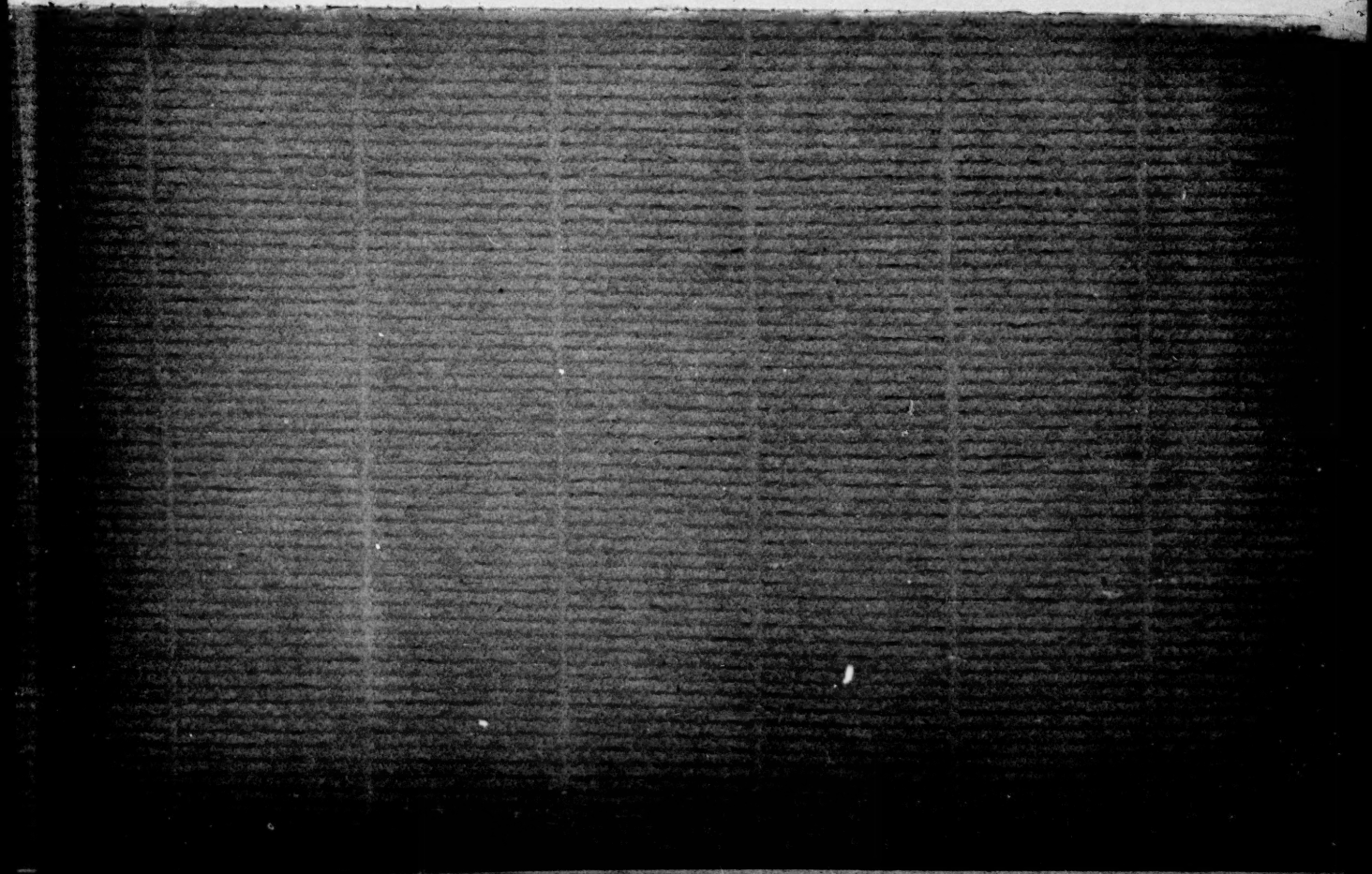

IN THE

Supreme Court of the United States.

October Term 1890.

PAT. CALLAN, Plaintiff in Error, vs. J. W. BRANSFORD, Treasurer.	No. 1271.
WM. H. JONES, Plaintiff in Error, vs. COMMONWEALTH OF VIRGINIA.	No. 1594.
J. J. DILLARD, Plaintiff in Error, vs. E. S. MOORMAN, Treasurer,	No. ——.
GREGORY ET ALS., Plaintiff in Error, vs. BRANSFORD, Treasurer,	No. 1595.
LITCHFORD SURVIVING PARTNER, &c., Plaintiff in Error, vs. DAY, SERGEANT, &c.	No. 1598.
LAWSON ET ALS., Plaintiff in Error, vs. BRANSFORD, Treasurer, &c.	No. 1597.
MALLAN BROS., Plaintiff in Error, vs. BRANSFORD, Treasurer, &c.	No. 1596.

REPLY BRIEF OF R. TAYLOR SCOTT, FOR APPELLEES, TO W. W. LARKIN, FOR APPELLANTS, MOTION TO ADVANCE AND IN SUPPORT OF MOTION BY APPELLEES TO DISMISS THESE SUITS.

The appellants *motion to advance* these suits is made under "section 6" of rule 26 of this court, and addressed to the judicial discretion of your honors, but the burden to shew sufficient cause is upon them. In vain will your honors search Mr. Larkin's *assignment of reasons* for one substantial ground on which to rest this motion. Of No. 1271, Mr. Larkin says: "The case of Pat. Callan is an action of assumpsit for money had and received, the said Callan having tendered coupons, which were received contrary to statute by said treasurer; the money was also demanded in payment, which was paid under protest and action was brought to recover on account of double payment, * * * this is one of *forty-five cases;* the plaintiff was not allowed to consolidate these cases, and an effort to make a test case with the others, to abide the decision therein was not successful."

He did not inform your honors, that this case was tried in a state court of competent jurisdiction, and judgment rendered against Callan. That Callan appealed to the supreme court of that state, (Virginia,) and in that tribunal his appeal was dismissed with the others of the same class; because under the constitution and laws of Virginia, that court had not jurisdiction over the contention. He failed to inform this court that *the coupons* tendered by Pat Callan were tendered in payment of a *liquor tax*, as is shown upon page 77 of the record, and that this tax by the statute law of said state, *is only payable in gold, silver, and legal tender notes of the United States;* a statute held to be constitutional by this court in "Hucless *v.* Childrey," (135 U. S. R., 662, 671), in which it was held *the liquor license tax*, at the pleasure of Virginia, must be paid "*in gold, in silver, in bank notes, or in diamonds.*"

Admit for argument the case as stated—yet there was no foundation for "*the action of assumpsit*" against Bransford, treaurer? This court so held in "Cary *v.* Curtis," (3 How., 236). Mr. J. Daniel said: "But the law never implies a promise to pay unless the duty creates the obligation to pay; and more especially it never implies a promise to do an act contrary to duty or contrary to law."

The position of the Collector of Customs in the case cited, and of Bransford, treasurer, *idem et idem*, and it must follow the law did not imply a promise because unjust to Bransford, treasurer, to whom it would be imputed, and contrary to equity, so to imply it. It is not possible to *imply* a promise to pay Callan. from Bransford, a tax gatherer of Virginia, well known to Callan who received Callan's *liquor license tax*, and paid it into the state treasury. In the language of the learned president of the Virginia court of appeals, "such presumption appears to us to be subversive of every rule of right. The more correct inference seems to be that payment under such circumstances, must *ex equo et bono*, nay *ex necessitate*, and in despite of objection made at the time, be taken as being made in conformity with the mandate of the law and the duty of the officer, which exclude not only any *implied* promise of repayment by the officer, but would render *void* an *express* promise by him, founded upon a violation both of law and of his duty."

Your honors will note that in the case quoted, the court *held* not only there was "*no assumpsit*," but that "*no court of the state, superior or inferior, has jurisdiction to entertain such a proceeding, and hence the judgment of the justice above mentioned is void.*" See "Mallan Bros. *v.* Bransford, treas'r," 86 Va. Rep., 675.

Concerning Nos. 1594, 1595, 1596, 1597, and 1598, Mr. Larkin says: "The decisions in the above cases are all of them in absolute disregard of the constitution and laws of the United States. They do not recognize the constitution and laws of the United States, as the supreme law of the land." See dissenting opinion of Lewis, P., in "Commonwealth *v.* Latham,

Judge." Your honor's will find this case reported in 85 Va., 632, and to it I invite attention.

Construing a state statute, it was there *held*, that the circuit court of Richmond city *alone* hath jurisdiction to enjoin or affect any judgment in behalf of the commonwealth. 2. Writ of prohibition will issue where suit remains in court against commonwealth, contrary to law, altho' the term of the judge against whom the writ is asked, expires before the writ issues. 3. Where an inferior court is proceeding in excess of its jurisdiction, this court has jurisdiction under the constitution, to issue a writ of prohibition. Does a dissenting opinion of the "president" of the court, change, alter, or modify *a decision?* I think not. In what particular does this case sustain the grave charges made by Mr. Larkin? Where can be found "*peculiar circumstances*," and "*public interests*," to distinguish Mr. Larkin's cases from others awaiting call upon your honor's docket?

Where in them can be found facts to support the charge he makes of "*unfriendly legislation*," "the whole machinery of the state * * * is enlisted to overturn the constitutional rights of the subject?"

After you have examined the records, I feel sure your honors must conclude that Mr. Larkin labors under some mental hallucination, and "has called upon his imagination for his facts."

In the Va. Law Journal, Vol. 14, No. 48, of November 27th, 1890, your honors will find reported cases Nos. 1195, 1197, and 1198. In them there was no Federal question in issue, and none adjudged. They were dismissed because in money value below the jurisdictional limit of the court!

I can see no feature in these contentions to distinguish them from the mass of cases which now await trial, and submit that the motion to advance should be denied.

MOTION TO DISMISS.—I now ask your honors' attention to motion made by the appellees to dismiss these appeals, because this court has not jurisdiction. Notice of this motion has been accepted by Mr. W. W. Larkin, counsel for the appellants, and is in the words and figures following, viz:

X See Appendix for these cases.

To Pat Callan, W. H. Jones, J. J. Dillard, Gregory, Litchford, Lawson, and Mallan Bros., appellants in the following cases, to-wit: Nos. 1594, 1595, 1596, 1597, 1598, *and* 1271, *now pending upon the docket of the Supreme Court of the United States.*

Take notice that on Monday, March 2d, 1891, the day named upon which you will move said court to advance upon its docket, the suits aforesaid, the appellees therein, and in each of said cases will submit to the court a motion to dismiss all and each, because said court has not jurisdiction to determine the issues therein.

Very respectfully,

JNO. W. BRANSFORD, *Treasurer, &c.*
COMMONWEALTH OF VIRGINIA.
E. S. MOORMAN, *Treasurer.*
M. J. DAY, *Sergeant.*
By R. TAYLOR SCOTT, *Their counsel.*

Richmond, Va., February 2d, 1891.

Service accepted for the within parties, appellants, this 3d day of March, 1891.

W. W. LARKIN,
Att'y for appellants.

The court should grant this motion, because, *first*—The records present no Federal question, (Bolling *v.* Lersner, 91 U. S., 643–6). *Second.*—The state court's decisions appealed from, construes the constitution and laws of the commonwealth of Virginia, and are binding upon this court: this is settled law and has never been departed from. (Polk *v.* Wendall, 9 Cranch, 85; Pease *v.* Peck, 18 How., 595; Atlantic and Gulf R. R. Co. *v.* Georgia, 98 U. S., 359; Amoskeag Nat. Bank *v.* Ottowa, 105 U. S., 667; Johnson *v.* Risk, 137 U. S., 300–309).

Third.—These suits in form against Bransford, treasurer, Moorman, treasurer, and Day, sergeant, in effect and fact, are suits against the *state of Virginia*, therefore cannot be maintained. The appellants sole object and purpose, to enforce the

contract and collect the debts evidenced by "*the coupons*" alleged to have been tendered in discharge of taxes.

Bransford, treasurer, and the other appellees, are neither *parties* nor "*privies*" to these contracts and their connection with these contentions, because as her officers, they discharged duties imposed by the constitution and laws of Virginia. *Such suits* are forbidden by the XI amendment to the constitution of the United States.

In the now famous case "*Ex parte Ayers, &c.*" 123 U. S. Reps., 443, Mr. J. Matthews said: "It cannot be doubted that the 11th amendment to the constitution operates to create an important distinction between contracts of a state with individuals, and contracts between individual parties. In the case of contracts between individuals, the remedies for their enforcement or breach in existence at the time they were entered into are part of the agreement itself, and constitute a substantial part of its obligation. That obligation, by virtue of the provision of article I, section 10, of the constitution of the United States, cannot be impaired by any subsequent state legislation. Thus not only the covenants and conditions of the contract are preserved, but also the substance of the original remedies for its enforcement. It is *different* with contracts between individuals and a state. In respect to these by virtue of the XI amendment to the constitution, there being no remedy by a suit against the state, the contract is substantially without sanction except that which arises out of the honor and good faith of the state itself, *and these are not subject to coercion.* Although the state may at the inception of the contract have consented, as one of its conditions to subject itself to suit, it may *subsequently* withdraw that consent and resume its original immunity, without any violation of the obligation of its contract in the constitutional sense."

"The very object and purpose of the eleventh amendment, was to prevent the indignity of subjecting a state to the coercive process of judicial tribunals at the instance of private parties.

"It was thought to be neither becoming nor convenient that the several states of the Union invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other states or aliens: or that the course of public policy and the administration of their public affairs should be subject to and controlled by the mandates of judicial tribunals without their consent and in favor of individual interests.

"To secure the manifest purposes of the constitutional exemption guaranteed by the 11th amendment, requires that it should be interpreted not literally and too narrowly, but fairly and with such breadth and largeness as effectually to accomplish the substance of its purpose.

"In this spirit it must be held to cover not only suits brought against the state by name, but that also against its officers, agents and representatives, where the state, tho' not named as such, is nevertheless the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates."

* * * "In contradistinction to these classes of cases, for the reasons given, we adjudge the suit of "*Cooper* v. *Marye*," in which the injunctions were granted against the present petitioners, to be in substance and in law a suit against the state of Virginia. It is therefore within the prohibition of the 11th amendment to the constitution. By the terms of that provision, it is a case to which *the judicial power* of the United States does not extend. The circuit court was without jurisdiction to entertain it. All the proceedings in the exercise of the jurisdiction which it assumed, *are null and void.*"

Mr. Justice Bradley, having carefully reviewed the previous adjudications and drawing therefrom the principles *settled*, states his "third" conclusion in the following language:

"*Third.* That no proceedings can be instituted by any holder of said bonds or coupons against the commonwealth of Vir-

ginia, either directly by suit against the commonwealth by name, or indirectly against her executive officers to control them in the exercise of their official functions, as agents of the state." "*McGahy & als.* v. *State of Virginia*," 135 U. S. Reps., 662–671; "New Hampshire *v.* Louisiana," 108 U. S. 76.

"*Tender*" is not "*payment*," *and the refusal to accept* "*a legal tender*" *is no* "*trespass.*" *The refusal violates no personal right*, and "tender" declined by the creditors is no foundation for an action of trespass on the case, nor for equitable intervention by injunction. This results from the *ordinary* as well as the *technical* meaning of "*tender.*" "*Tender*" is but the debtors *offer* to pay, refused by the creditor, the thing tendered remains in the possession and under the control of the debtor, and is his to do with as he pleases.

"Tender" is a plea in bar of a plaintiff's demand, *a defense and no more!* It is *a shield* but never *a spear or a sword!*

To be availed of must be pleaded, and the "*onus probandi*" is upon *the debtor.* I quote again Mr. Justice Matthews: "It seems to be supposed in argument that the right of tax-payers in Virginia, who have tendered tax receivable coupons in payment of their taxes to the proper collecting officer, to be forever thereafter free from suit by the state to recover judgment for such taxes, rests upon the proposition that such a tender is in law a payment of the taxes, so as to extinguish all claim for them on the part of the state. This proposition indeed is said to be justified by the authority of certain language in the opinion of this court in the case of *Poindexter* v. *Greenhow.* In that case the effect of a tender in payment of taxes upon the subsequent act of the collector in seizing the personal property of the tax-payer, was considered and decided, but there is nothing in the opinion which countenances the idea, *that such a tender was a payment of the taxes so as to extinguish all subsequent claim of the state therefor.*"

Its effect was precisely defined in the following statement, page 299: "His tender as we have already seen was equivalent

to payment, *so far as concerns the legality of all subsequent steps by the collector to enforce payment by distraint of his property.*" (These italics are Judge Mathews.)

"There is nothing in the opinion to indicate that the party making the tender was relieved from the operation of the rule of law, making it necessary to keep the tender good: *or that a subsequent action at law for the recovery of the taxes, would be unlawful, reserving of course in such a case the admitted right of the defendant to plead the fact of his tender, and bring it into court in pursuance of the usual practice in such cases, as a defense.*" (Poindexter *v.* Greenhow, 114 U. S. Rep., 270; Ex parte Ayres, &c., 123 U. S. Rep., 443).

The commonwealth of Virginia has given a remedy to these appellants, in the Code of 1887, sections 406, 407, 408, and they must pursue it:

Sec. 406. Tax-collector to receive coupons for identification and verification. Whenever any tax-payer, or his agent shall tender to any person whose duty it is to collect or receive taxes, debts, or other demands due the state, any papers or instruments, printed, written, or engraved, purporting to be coupons detached from bonds issued under the act entitled "an act to provide for the funding and payment of the public debt," approved March thirtieth, eighteen hundred and seventy-one, or from bonds issued under the act entitled "an act to provide a plan of settlement of the public debt," approved March twenty-eighth, eighteen hundred and seventy-nine, in payment of any such taxes, debts, or demands, the person to whom such papers are tendered, shall receive the same and give the party making the tender a receipt, stating that he has received them for the purpose of identification and verification.

Sec. 407. But shall require payment of taxes in money.—He shall at the same time require such tax-payer to pay his taxes in gold or silver coin, United States treasury notes, or national bank notes, and upon payment give him a receipt for the same. In case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

Sec. 408. Shall deliver to judge; proceedings to try genuineness of coupons. He shall mark each paper as coupons so received, with the initials of the tax-payer from whom received, and the date of receipt, and shall deliver the same, securely sealed up, to the judge of the county court of the county, or corporation or hustings court of the city, in which such taxes, debts, or demands are payable. The tax-payer shall thereupon be at liberty to file his petition in said county or corporation court against the commonwealth. A

summons to answer the petition, shall be served on the commonwealth's attorney, who shall defend the same. The petition shall allege that the petitioner has tendered certain coupons in payment of his taxes, debts, or demands, and pray that a jury be impaneled to try the question as to whether they are genuine coupons, legally receivable for taxes, debts, and demands. Upon this petition an issue shall be made in behalf of the commonwealth, which shall be tried by a jury. If it be finally decided in favor of the petitioner, that the coupons tendered by him are genuine coupons, legally receivable for taxes, debts, and demands, then the judgment of the court shall be certified to the treasurer, who, upon receipt thereof, shall receive said coupons, and shall refund the money before paid by the petitioner out of the first money in the treasury, in preference to all other claims.

Chief Justice Taney, in "Beers *v.* Arkansas," said:

"It is an established principle of jurisprudence in all civilized nations, that the sovereign cannot be sued in its own courts, or in any other without its consent and permission; but it may if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals or by another state. And as this permission is altogether voluntary on the part of the sovereignty, *it follows that it may* prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted, and may withdraw its consent whenever it may suppose that justice to the public requires it." (Beers *v.* Arkansas, 20 How., 527–530; Bank of Washington *v.* Arkansas, *Id.*, 530–532; Antoni *v.* Greenhow, 107 U. S., 769).

Respectfully submitted,

R. TAYLOR SCOTT,
Counsel for the appellees.

Richmond, Va., Feb. 5th, 1891.

APPENDIX.

SUPREME COURT OF APPEALS OF VIRGINIA.

LITCHFORD ET ALS. v. DAY, SERGEANT.*

Richmond, November 13, 1890.

1. RECORD—*How Made Up When Parties Differ—What Necessary.*—Where there were numerous cases before the court, identical in all respects, save in amounts, dates, and names of parties, the trial judge, under §3459, of Code 1887, directed a complete record to be made in one case, said record to serve for all the said cases, only each case to show dates, names of parties, &c., referring for the record for that case to the record in the case completely made up. The one record was made complete as directed, but the other case gave the names of the parties only. *Held:* Except as to the one case, the record is not such as will enable this court to consider it.
2. SUPREME COURT OF APPEALS—*Jurisdiction—Amount in Controversy.*—In matters purely pecuniary, the jurisdiction of this court is limited by the Constitution to an amount of not less than $500.

Appeal from the corporation court of the city of Lynchburg. Opinion states the case.

W. W. Larkin, for appellant. *R. Taylor Scott*, Attorney-General, for commonwealth.

LACY, J.—This is an appeal from a decree of the corporation court of the city of Lynchburg, rendered on the 27th day of September, 1889.

In making up the record in this case for an appeal, the counsel representing the parties intending to appeal, gave notice to

* And fifty-one other cases.

the counsel of the opposite party of such intention, as required by section 3456 of the Code of Virginia. The counsel, however, were not able to make up the record by agreeing on the copies, as provided for by section 3458; and, under section 3459, the question was submitted to the judge.

Section 3459 is as follows: "If the appellee or defendant in error, or his counsel, desire any part of the record to be copied, and the appellant, or his counsel, object to the same, the question may be referred to the judge of the court in which the case was decided, who shall decide the same, and the clerk, in making out the transcript, shall conform to his instructions."

The judge of the corporation court of Lynchburg, to whom the question was referred under the foregoing section of the Code, directed the clerk as follows: "In respect to copying the records for appeal in the cases mentioned within, (*Day, Sergeant*, v. *Litchford*, and fifty-one cases), make one complete record in one case, which record is to serve as the record for all the cases, *which are identical*, omitting only what counsel may mutually agree to omit. It is useless to copy a paper in one case, or many cases, when the same, or a like paper, (with exception of names, dates, aad amounts,) is already copied in another record, which may be referred to; but each case ought to show the *names of the parties litigant, amounts, &c.*, referring for the record for that case to the record in the case which is completely made up."

The record in the Litchford case is completely made up; but the others are not copied, their name only being mentioned. There is no evidence in the transcript of the dates, nor of the amounts, although the judge of the court, authorized by law to do so, has directed that enough shall be copied of each case to show "the names of the parties litigant, the amounts, and dates."

This is not such a record in these cases as will enable this court to consider them. This court cannot reverse or affirm a case on appeal simply upon inspection of its name. And the motion is made here to dismiss them for want of jurisdiction,

the amount involved being less in each case than the jurisdictional amount of $500. While we cannot determine this question by an inspection of the several cases, which appear here only by their names, we find that in the Litchford case, which is presented to this court as the typical case by the appellant's counsel, (the same counsel representing all the cases), and by whose request and insistance the transcript of the record was so made up, that the controversy is over the sum of $26 63 and $2 96—an amount so small that its selection as the type of all indicates that all are of the same or a similar amount.

The case of *Litchford* v. *Day*, being below the jurisdictional amount of $500, prescribed for this court by the constitution of the state, must be dismissed for that cause, and the other appeals must be dismissed as improvidently awarded. If they are like the type, they must be dismissed for the same reason for which that is; and, if unlike that, they are not properly before this court, and must be dismissed. None of them involve a matter in controversy, exclusive of cost, equal in value or amount to $500. The constitutionality of no law is involved, and they do not come within any of the exceptions provided for by the 2d section of Article VI, of the constitution of the state, (*McIntosh* v. *Broder*, 80 Va., 217; *Hawkins* v. *Gresham*, 85 Va., 34; 12 V. L. J., 800), and must be dismissed for the stated reasons. *Appeals Dismissed.*

SUPREME COURT OF APPEALS OF VIRGINIA.

LAWSON ET ALS. v. BRANSFORD, TREASURER.*

Richmond, November 13, 1890.

SUPREME COURT OF APPEALS—*Jurisdiction—Amount in Controversy.*—In matters purely pecuniary, the jurisdiction of this court is limited by the constitution to an amount of not less than $500.

Appeal from corporation court of the city of Lynchburg.

* And thirty seven other cases.

W. W. Larkin, for appellant. *R. Taylor Scott*, Attorney-General, for commonwealth.

LACY, J.—These are appeals from a decree of the corporation court of Lynchburg, rendered on the 27th day of September, 1889.

In each case the record shows that the amount in controversy is less than the jurisdictional sum of $500, prescribed for this court by the constitution of the state, and the Attorney-General moves to dismiss the cases for that cause. The amount in each case is less than sufficient to give this court jurisdiction, and the appeals cannot be united for that purpose, according to an unbroken line of decisions in this court, (*Umbarger* v. *Watts*, 25 Gr., 25; *Fink* v. *Denny*, 75 Va., 663; *McCarthy* v. *Hamaker*, 5 S. E. Rep., 538); and, the amounts being severally less than the said jurisdictional sum, the said appeals must be dismissed. *Hawkins* v. *Gresham*, 85 Va., 34; 12 V. L. J., 800; *McIntosh* v. *Broden*, 80 Va., 217. *Appeals Dismissed.*

SUPREME COURT OF APPEALS OF VIRGINIA.

GREGORY ET ALS. v. BRANSFORD, TREASURER.*

Richmond, November 13, 1890.

SUPREME COURT OF APPEALS—*Jurisdiction—Amount in Controversy.*—In matters purely pecuniary, the jurisdiction of this court is limited by the constitution to an amount of not less than $500.

Appeal from the corporation court of the city of Lynchburg.

W. W. Larkin, for appellant. *R. Taylor Scott*, Attorney-General, for commonwealth.

LACY, J.—These are appeals from a decree of the corporation

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* And many other cases.

court of the city of Lynchburg, rendered on the 19th day of June, 1889.

In each of these cases the record shows that the amount in controversy is less in value or amount than $500, and the Attorney-General moves to dismiss for want of jurisdiction; which will be done, reason in writing given with the record in the suits of Lawson and thirty-seven other cases against Bransford, treasurer, decided this day. *Appeals Dismissed.*